161 U.S. 646

TRANSCRIPT OF RECORD.

161-646

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 768.

THOMAS W. PEARSALL, APPELLANT,

vs.

THE GREAT NORTHERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED OCTOBER 10, 1895.

(16,058.)

the State of Virginia to direct that the return shall be in other words, meaning the same thing, or for her courts to decide that a return varying only in sound, but conveying the same meaning shall be held sufficient."

In the case of *Nations v. Johnson*, 24 How. 195, this court practically decided the very question involved. It was there held that constructive service was valid in proceedings in error as to parties out of the jurisdiction, and that personal notice was not necessary in such cases. This case goes further than is required in the present. There the original proceeding was in another court. A writ of error, too, was generally treated at common law as an independent suit. A writ of error is said to be an original writ because at common law it would issue out of the court of chancery. Yet this court, looking at the substance rather than the form, said that according to the practice here it is rather a continuation of the original litigation than the commencement of a new action. Much more then, must it be held that a *scire facias* issuing out of the same court,—issuing not for the purpose of original summons, but simply of carrying into effect what has been done already,—is a mere continuation of the original litigation.

It is therefore submitted that the judgment of the Circuit Court should be reversed, and the cause remanded with directions to enter a judgment for the plaintiff.

GEORGE A. KING,
Of Counsel for Plaintiff in Error.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Order for subpœna	17	10
Subpœna	19	11
Marshal's return on subpœna	20	11
Marshal's return on notice of application for injunction	22	12
Notice of application for injunction	23	12
Answer	26	13
Hearing on motion for injunction	35	18
Hearing on motion for injunction continued	37	18
Submission of motion for injunction	39	19
Opinion on motion for injunction	41	20
Order overruling motion for injunction	65	34
Order granting leave to amend complaint	67	35
Notice of hearing	69	35
Final decree	71	36
Order allowing appeal	71	36
Stipulation as to taxation of costs	73	37
Bond for costs	75	37
Stipulation as to acts of the legislature of Minnesota	78	38

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 29, 1895.

	Original.	Print.
Act to incorporate the Minneapolis and St. Cloud R. R. Co., March 1, 1856	79	39
Act to amend foregoing act, February 23, 1864	89	47
Act granting swamp lands to aid the M. and St. C. R. R. Co. in building branches to connect with the L. S. and M. R. R. and the W. and St. P. R. R. or any other railroad in southern Minnesota, February 11, 1865	90	47
Act to amend charter of M. and St. C. R. R. Co., February 28, 1865	93	49
Act to amend act granting swamp lands, March 5, 1869	102	56
Act to amend charter of M. and St. C. R. R. Co., March 6, 1869	103	56
Act to amend charter of M. and St. C. R. R. Co., March 2, 1870	104	57
Act to extend time for construction and completion of a branch of the M. and St. C. R. R. Co., March 11, 1879	105	58
Act to amend act amending act granting swamp lands, March 7, 1881	107	59
Act to amend act granting swamp lands, March 10, 1885	108	60
Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's sound, on the Pacific coast, by the northern route, July 2, 1864	110	61
Resolution extending time for completion of U. P. R'y, Eastern division, May 7, 1866	123	70
Joint resolution extending time for completion of N. P. R. R., July 1, 1868	123	70
Joint resolution granting consent of Congress provided for in section 10 of the act incorporating the N. P. R. R. Co, March 1, 1869	124	70
Joint resolution granting right of way for the construction of a railroad from a point at or near Portland, Oregon, to a point west of the Cascade mountains, W. T., April 10, 1869	124	70
Resolution authorizing the N. P. R. R. Co. to issue bonds for the construction of its road, &c., May 31, 1870	125	71
Act to aid in the construction of the Northern Pacific railroad and telegraph lines from Lake Superior to Puget's sound, March 2, 1865	128	72
Act to authorize any railroad company to lease, purchase, or in any way become owner of or to control any other railroad corporation, &c., March 3, 1881	130	73
Act relating to railroad corporations and common carriers, March 9, 1874	133	75
Act in relation to taxation and to facilitate construction of N. P. R. R. Co., March 4, 1870	134	75
Constitution of Minnesota (sections 1 and 2)	136	76
Clerk's certificate	137	77

1 UNITED STATES OF AMERICA:

THOMAS W. PEARSALL, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, Defendant.

Pleas before the honorable the judges of the circuit court of the United States of America for the district of Minnesota, third division, of the June term, A. D. 1895, of said court, held in the city of St. Paul, in said district, in the year 1895.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on the 22nd day of August, 1895, came the complainant, by his solicitor, and filed in the clerk's office of this court his bill in equity in words and figures as follows, viz:

2 In the Circuit Court of the United States for the District of Minnesota. In Equity.

To the honorable the judges of the circuit court of the United States for the district of Minnesota, sitting in equity:

Thomas W. Pearsall, who is a resident and citizen of New York, in the State of New York, brings this his bill, for himself and for all other stockholders in the Great Northern Railway Company similarly situated, against the Great Northern Railway Company, which is a corporation organized and existing under the laws of the State of Minnesota and a resident of the State of Minnesota; and thereupon your orator complains and says:

I.

The defendant, The Great Northern Railway Company, is a corporation organized and existing under those certain acts of legislature of the late Territory and present State of Minnesota, as follows, to wit: An act to incorporate the Minneapolis and St. Cloud Railway Company, approved March 1, 1856; An act to amend an act entitled "An act to incorporate the Minneapolis and St. Cloud Railway Company, passed March 1, 1856," approved February 23, 1864; An act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect wieh the Lake Superior and Mississippi railroad and the Winona and St. Peter railroad or another railroad in southern Minnesota, approved February 11, 1865; An act to amend an act entitled "An act to incorporate the Minneapolis and St. Cloud Railroad Company, approved March 1, 1856, and to repeal certain portions of an act amending the charter of said company, passed February 23, 1864," approved February 28, 1865; An act to amend an act entitled "An act granting swamp lands to aid the Minneapolis and St. Cloud Rail-
3 road Company in building branches to connect with the Lake Superior and Mississippi railroad and Winona and St.

Peter railroad or any other railroad in southern Minnesota," approved March 5, 1869; An act to amend the charter of the Minneapolis and St. Cloud Railroad Company, approved March 6, 1869; An act to amend the charter of the Minneapolis and St. Cloud Railroad Company, approved March 2, 1870; An act to extend the time for the construction and completion of a branch of the Minneapolis and St. Cloud railroad, approved March 11, 1879; An act to amend an act entitled "An act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi railroad and the Winona and St. Peter railroad or any other railroad in southern Minnesota, approved February 11, in the year of our Lord one thousand eight hundred and sixty-five, as amended," approved March 10, 1865.

Your orator hereby refers to each and every part of each of the said several acts and prays to have each and every part of the same taken and treated as a part of this bill of complaint, with the same force and effect as if the same had been quoted herein at large.

II.

The grantees of the rights, privileges, and franchises conferred by each of the several acts hereinbefore mentioned duly accepted the same immediately after the passage thereof, and the same have ever since remained of full force and effect as therein enacted.

III.

Since the enactment of the original of the said acts and of all the amendments thereto prior to the year 1880, the Minneapolis and St. Cloud Railroad Company had constructed and put into operation that portion of its lines of railway authorized to be constructed and operated by the said acts, which extends from St. Cloud, in the State of Minnesota, eastwardly to the town of Hinckley, in said State.

IV.

Subsequently to the construction of the said railroad from St. Cloud to Hinckley the residue of the branch authorized by the said several acts of legislature to be constructed from St. Cloud to the waters of Lake Superior was in pursuance of authority conferred by said acts organized as a separate corporation under the name of the Eastern Railway Company of Minnesota, which separate corporation in the year 1889 constructed, completed, and put into operation all that part of the said branch extending from Hinckley eastward to West Superior, in the State of Wisconsin, and to Duluth, in the State of Minnesota, upon the waters of Lake Superior, so that subsequently to said last-named year the whole of said branch, extending from St. Cloud to the waters of Lake Superior, has been constructed and put into operation.

V.

In the year 1889 the said Minneapolis and St. Cloud Railroad Company, in pursuance of authority by the said acts of legislature conferred, duly changed its name to the Great Northern Railway Company, which name it has ever since borne and now bears.

VI.

Prior to February 1, 1890, the St. Paul, Minneapolis and Manitoba Railway Company, a corporation organized and existing under the laws of the late Territory and present State of Minnesota, but authorized to build and operate railways also in the late Territory of Dakota and present States of North Dakota and South Dakota, and in the late Territory of Montana and present State of Montana, and in the States of Idaho and Washington, had built and put into operation divers railways in the said several States, having an aggregate length of over three thousand miles, which railways are hereafter more particularly described. On the date last mentioned, under and in pursuance of the said and other acts of legislature of the State of Minnesota and of the said other several Territories and States hereinbefore mentioned, the said St. Paul, Minneapolis and Manitoba Railway Company duly leased, at a fixed rental, unto the defendant herein, for a period of nine hundred and ninety-nine years from said date, all the said railroad which it had theretofore built and then owned or which it might at any time thereafter build or acquire. Immediately upon the execution of the said lease the Great Northern Railway Company went into possession of the said leased railways and their appurtenances and has ever since continued to and does now operate and maintain the same. Since the execution of the said lease the St. Paul, Minneapolis and Manitoba Railway Company has duly constructed and gotten ready for operation many miles of additional railroad in the said several States, all of which upon completion were taken possession of by the said defendant herein and in pursuance of the terms of the said lease, and have ever since been maintained and operated by the defendant in pursuance thereof.

The several lines of railway hereinbefore mentioned now owned by the St. Paul, Minneapolis and Manitoba Railway Company and leased and operated as aforesaid by the defendant herein are as follows, to wit: A line of railway extending from St. Paul via Minneapolis, Elk River, St. Cloud, Sauk Center, Fergus Falls, Glyndon, and Crookston, to the northern boundary line of the State of Minnesota at St. Vincent; another line of railroad extending from Minneapolis along the westerly bank of the Mississippi river to St. Cloud; another line of railway extending from St. Cloud easterly to Hinckley, hereinbefore mentioned; another line of railroad extending from Elk River northward to Milaca, on the line of the St. Cloud and Hinckley branch, so called; another line of railroad extending from East Minneapolis to Breckenridge; another line of railroad extending from Sauk Center to Park Rapids; another line of railroad extending from East St. Cloud to Sauk

Rapids; another line of railroad extending from Hutchinson Junction to Hutchinson; another line of railroad extending from Benson, Minnesota, to Watertown, in South Dakota; another line of railroad extending from Evansville, in Minnesota, to Ellendale, in North Dakota; another line of railroad extending from Wahpeton, North Dakota, to Moorhead, in Minnesota; another line of railroad extending from Barnesville to Moorhead; another line of railroad extending from Carman to Fosston; another line of railroad extending from Crookston to Red Lake Falls and Thief River Falls, all the foregoing lines being situated in the State of Minnesota, except as hereinbefore otherwise expressly stated; another line of railroad extending from Crookston, Minnesota, westward to the west line of the State of Minnesota, thence across the State of North Dakota to the western boundary thereof, and thence to Great Falls, in the State of Montana; another line of railroad extending from Fargo, in North Dakota, through Grand Forks to the northern boundary line of said State at Neche; another line of railroad extending from Grafton to Cavalier, in North Dakota; another line of railroad extending from Wahpeton, North Dakota, through Mayville and Larimore to Langdon, North Dakota; another line of railroad extending from Everest, in North Dakota, through Ripon to Portland Junction, North Dakota; another line of railroad extending from Ripon, in North Dakota, to Hope, North Dakota; another line of railroad extending from Church's Ferry, in North Dakota, to St. John; another line of railroad extending from Rugby Junction, in North Dakota, to Bottineau, North Dakota; another line of railroad extending from Rutland Junction, North Dakota, to Aberdeen, in South Dakota; another line of railroad extending
7 from Pacific Junction, Montana, to the western boundary of Montana, and thence across the States of Idaho and Washington to Everett, on Puget sound, in the last-named State; all of the said railroads so owned by the St. Paul, Minneapolis and Manitoba Railway Company and leased to and operated by the Great Northern Railway Company, having a total aggregate mileage of nearly 3,800 miles.

In addition to the mileage owned and leased as aforesaid the Great Northern Railway Company owns the entire capital stock of the following-mentioned railroad corporations, which own and operate railroads as follows:

The Eastern Railway Company of Minnesota, which owns and operates the said railroad extending from Hinckley to Duluth and West Superior; the Wilmar and Sioux Falls Railroad Company, which owns and operates a railroad extending from Wilmar, in Minnesota, to Yankton, in South Dakota; the Duluth, Watertown and Pacific Railroad Company, which owns and operates a railroad extending from Watertown, in South Dakota, to Huron, in South Dakota; the Montana Central Railway Company, which owns and operates a railroad extending from Great Falls, Montana, to Butte, Montana, with divers branches extending from the main line to various important mining and industrial points in said State; the Seattle and Montana Railway Company, which owns and operates

a railway extending from Seattle, Washington, to Fairhaven Junction, Washington; the Fairhaven and Southern Railway Company, which owns and operates a railway from Sedro, Washington, to the northern boundary line of the State of Washington; the New Westminster and Southern Railway Company, which owns and operates a line of railway in British Columbia extending from the northern boundary line of the United States to New Westminster, in British Columbia. All the railways hereinbefore in the bill described form and are operated as a combined railway system under the name of the Great Northern Railway line and comprise an aggregate
8 mileage of nearly 4,500 miles.

VII.

The Great Northern Railway Company had prior to January 1, 1894, made and issued its preferred capital stock to the aggregate amount of twenty-five millions of dollars, in shares of $100 each, all of which had been fully paid up. Of the said stock your orator has for more than one year past been and now is the *bona fide* holder of more than five hundred shares. Your orator was a shareholder and held said shares of stock at and before the time of the transaction of which he herein complains, and this suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

VIII.

The Northern Pacific Railroad Company is a corporation organized and existing under the following-mentioned acts and joint resolutions of Congress of the United States, to wit:

An act granting land to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound, on the Pacific coast, by the northern route, approved July 2, 1864; a resolution extending the time for the completion of the Union Pacific Railroad, Eastern division, approved May 7, 1866; joint resolution extending the time for completion of the Northern Pacific railroad, approved July 1, 1868; joint resolution granting the consent of Congress provided for in section 10 of the act incorporating the Northern Pacific Railroad Company, approved July 2, 1864, approved March 1, 1869; joint resolution granting right of way for the construction of a railroad from a point at or near Portland, Oregon, to a point west of Cascade mountains, in Washington Territory, approved April 10, 1869; a resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road and to
9 secure the same by mortgage, and for other purposes, approved May 31, 1870.

Your orator prays leave to refer to each and every part of each of said several acts and joint resolutions of Congress, and to have each and every part of the same taken and considered as if the same had been herein quoted at length.

IX.

Under and in pursuance of the said several acts and joint resolutions of Congress the Northern Pacific Railroad Company had constructed and put into operation prior to January 1, 1880, all its main line of road, extending from Ashland, in the State of Wisconsin, westward across the State of Wisconsin and across the States of Minnesota, North Dakota, Montana, and Idaho, and in the State of Washington to Wallula Junction therein; also all that other part of its main line of railroad extending from Portland, Oregon, to Tacoma, Washington; also the whole of its Cascade branch, extending from Pasco Junction, in the State of Washington, to Tacoma, in the State of Washington. The Northern Pacific Railroad Company had also prior to said date acquired all the stock of the following other mentioned railroads, to wit, the St. Paul and Northern Pacific Railroad Company, which owns a railway extending from St. Paul, Minnesota, to Brainerd, Minnesota, and from Little Falls, Minnesota, to Staples, Minnesota; the Duluth and Manitoba Railroad Company, which owns a line of railroad extending from Winnepeg Junction, Minnesota, via Red Lake Falls, Minnesota, and Grand Forks, North Dakota, to international boundary line, North Dakota; the Duluth, Crookston and Northern Railroad Company, which owns a railroad extending from Fertile Junction, Minnesota, through Crookston to Carthage Junction; the Little Falls and Dakota Railroad Company, which owns a railroad extending from Little Falls, Minnesota, to Morris, Minnesota; the Northern Pacific, Fergus and Black Hills Railroad Company, which owns a line of railroad extending from Wadena, Minnesota, to Milnor, South Dakota; the James River Valley Railroad Company, which owns a line of railroad extending from Jamestown, North Dakota, to Oakes, North Dakota; the Jamestown and Northern Railroad Company, which owns a line of railroad extending from Jamestown, North Dakota, to Leeds, North Dak.; the Fargo and Southwestern Railroad Company, which owns a line of railroad extending from Fargo, North Dakota, to Edgerly, North Dakota; the Sanborn, Cooperstown and Turtle Mountain Railroad Company, which owns a line of railway extending from Sanborn, North Dakota, to Cooperstown, North Dakota; the Rocky Fork and Cook City Railroad Company, which owns a line of railroad extending from Laurel, Montana, to Red Lodge, Montana; the Rocky Mountain Railroad Company of Montana, which owns a line of railroad extending from Livingston, Montana, to Cinnebar, Montana; the Northern Pacific and Montana Railroad Company, which owns sundry short lines of railroad in Montana between the following-named points in said State: Clough Junction to Marysville, Jefferson to Calvin, Missoula to Grantsdale, Drummond to Rumsey, Logan to Butte, Sappington to Norris, Harrison to Pony, Boulder to Elkhorn, De Smet to St. Regis; the Helena and Jefferson County Railroad Company, which owns a line of railroad extending from Prickley Pear Junction to Jefferson, Montana; the Cœur d'Alene Railway and Navigation Company, which owns a line of railroad extending from Hauser Junction, Idaho, to Cœur

d'Alene, Idaho; the Central Washington Railroad Company, which owns a line of railway extending from Cheney, Washington, to Coulee City, Washington; the Spokane and Palouse Railroad Company, which owns a railroad extending from Marshal Junction, Washington, to Lewiston, Idaho, with branches in the States of Washington and Idaho; the Spokane Falls and Idaho Railroad Company, which owns another short line of railroad in the State of Washington; the Cleallum Railroad Company, which owns a line of railroad extending from Cleallum Junction to the coal-fields in Washington; the United Railroad Company of Washing-
11 ton, which owns sundry short lines of railroad in the State of Washington; also the Northern Pacific and Cascade Railroad Company, the Green River and Northern Railroad Company, the Tacoma, Orting and Southeastern Railroad Company, each of which owns one or more short lines of railroad in the last-named State; the Northern Pacific and Manitoba Railroad Company, which owns a system of railroads in the province of Manitoba, British America, connecting at the boundary line with the railroad of the Duluth and Manitoba Railroad Company.

The said railways, comprising those owned by the Northern Pacific Railroad Company itself as well as those owned by companies the capital stock of which is held by the Northern Pacific Railroad Company, are now and for a long time since have been operated as a single system of railways, under the name of the Northern Pacific system, and have an aggregate mileage of nearly 4,500 miles.

X.

The Northern Pacific Railroad Company prior to January 1, 1893, had made and issued its capital stock to the amount of upwards of eighty millions of dollars, divided into shares of $100 each, all of which is still outstanding, and had also made and issued several series of bonds, secured by mortgages of its railways and other properties and of its franchises, including its franchise to be a corporation, as follows, to wit:

Missouri Division bonds	$1,965,000
Pend d'Oreille Division bonds	1,348,000
General first-mortgage bonds	44,482,000
General second-mortgage bonds	19,626,000
General third-mortgage bonds	11,298,000
Consol. mortgage bonds	42,587,000

All or nearly all of each of the said series of bonds are still outstanding in the hands of the public and all the principal
12 thereon and most of the interest thereon which has accrued during the last two years remain wholly unpaid. Prior to the month of August, 1893, the Northern Pacific Railroad Company had become insolvent and had contracted large floating debts, which it was wholly unable to pay, and in consequence thereof receivers of its property and effects were, on or about that month, appointed by the several circuit courts of the United States in the

various States and districts traversed by its lines of road, which receivers are still in possession of and operating its railroads and other properties and are managing the affairs of the system.

XI.

The defendant and the holders of a majority of the said several classes of outstanding bonds secured by the second, third, and consolidated mortgages of the said Northern Pacific Railroad Company have entered into an arrangement or agreement the exact terms of which are unknown to your orator, but which in substance is as follows: The holders of the said several classes of bonds shall cause each of the said mortgages to be foreclosed and the railroads and other properties and franchises of the Northern Pacific Railroad Company, including its franchise to be a corporation, to be sold at foreclosure sale, subject to the said divisional and general first-mortgage bonds, and shall cause the same to be bid in and purchased at such sale by a committee of bondholders or other agency or representative for the benefit of all the holders of the said outstanding bonds secured by the mortgages so foreclosed, and shall cause the said railways, properties, and franchises to be reorganized as a new corporation, either under the said acts and joint resolutions of Congress relating to the Northern Pacific railroad or under some other appropriate and sufficient legislation of the United States or of some one or more States. After and upon such foreclosure
13 sale and reorganization the reorganized company shall issue its bonds to the aggregate amount of over one hundred millions of dollars and its fully paid capital stock to the further amount of one hundred millions of dollars, and shall enter into a traffic contract with the Great Northern Railway Company, whereby in substance the two companies shall thereafter exchange traffic at all intersecting and connecting points and shall divide the common earnings from such exchanged traffic on the basis of mileage hauled on the systems respectively. In consideration of such traffic contract the Great Northern Railway Company shall guarantee, for the benefit of the holders of the said bonds so to be issued by the said reorganized company, that the net income of the latter-named company applicable to the payment of the interest upon said bonds shall never fall below the sum of $6,200,000 per year, and shall also, if requested, execute upon each of the said bonds its guarantee of the interest thereof up to the aggregate amount of the said annual sum. As compensation for the risk of loss to the stockholders in the defendant company which the said guarantee might produce by the diversion of portions of its earnings of the Great Northern Railway Company to make good its said guarantee of interest upon the bonds of the reorganized company, the last-named company shall transfer to the shareholders of the Great Northern Company, or to some person or corporation as trustee for their use, the one-half part of the capital stock of the said reorganized company. Your orator is informed and believes that the defendant claims the right to make and carry out the contract and arrangement aforesaid, in-

cluding the guarantee aforesaid, under and by authority of the laws of the State of Minnesota, and in particular under and by authority of the several acts of legislature aforesaid relating to it; but your orator charges that the said acts of legislature do not confer upon the defendant the power necessary to make or carry into
14 effect the said arrangement, and that the same is expressly prohibited by the general laws of the State of Minnesota, and in particular by two acts of the legislature thereof, namely, to wit, chapter 29 of the General Laws of 1874 and by chapter 94 of the General Laws of 1881.

XII.

All of the shares of stock of the Great Northern Railway Company now outstanding as aforesaid, including the shares of said stock held by your orator, are now and for a long time have been of great value, to wit, of the value of more than $125 per share, and will continue of great value unless depreciated by the entering into and carrying out of the arrangement hereinbefore charged.

The consum-ation and execution of such arrangement will depreciate the value of the stock so as aforesaid held by your orator greatly below par, and will also have the same effect upon the stock of other holders similarly situated, and will damage your orator particularly in the sum of more than five thousand dollars, and the consum-ation and execution of such contract will work irremediable injury to your orator and the other holders of stock similarly situated. Your orator has heretofore frequently requested said defendant and its officers to desist from entering into, consum-ating, and executing the arrangement aforesaid; but they have in response to such requests always refused so to desist and threaten and intend and will, unless restrained by the order of this court, enter into, execute, and carry out the aforesaid arrangement. Unless this court shall enter in jurisdiction of this your orator's bill and grant the relief herein prayed, great multiplicity of suits will necessarily follow.

Forasmuch as your orator can have no adequate relief except in this court, and to the end, therefore, that the defendant may, if it can, show why your orator should not have the relief hereby prayed, and may make a full disclosure and discovery of all the
15 matters aforesaid, and according to the best and utmost of *their* knowledge, remembrance, information, and belief full, true, direct, and perfect answer make to the matters hereinbefore stated and charged, but not under oath, an answer under oath being hereby expressly waived;

And that the defendant may be restrained from entering into, executing, or carrying out the aforesaid arrangement and undertaking, and from any further violation of the rights of your orator in the premises—

Your orator prays that your honors may grant a writ of injunction, issuing out of and under the seal of this honorable court, perpetually enjoining and restraining the said defendant, its officers, directors, attorneys, agents, and servants, from in any manner or

form entering into, executing, and consum-ating such arrangement and undertaking in any form or manner; that an injunction to the same effect may be issued pending this litigation; that the said arrangement or undertaking, if executed by the said defendant, may be declared null and void and ordered to be cancelled, and for such other and further relief as the equity of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orator not only a writ of injunction, conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, directed to the said Great Northern Railway Company, commanding it on a day certain to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall seem proper and required by the principles of equity and good conscience.

HENRY J. HORN,
Solicitor for Complainant and of Counsel.

16 UNITED STATES OF AMERICA, }
County of *State of New York*, } *ss*:

On this 20th day of August, 1895, before me personally appeared Thomas W. Pearsall, the complainant above named, who, being by me duly sworn, deposeth and says that he had read the same and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

THOMAS W. PEARSALL.

Subscribed and sworn before me this 20th day of August, A. D. 1895.

WILLIAM M. BENNETT,
[NOTARIAL SEAL.] *Notary Public, New York County.*

(Endorsed:) Bill of complaint. Filed Aug. 22nd, 1895. Oscar B. Hillis, clerk.

17 And on the same day the following order for chancery subpœna was entered of record in said cause, to wit:

Chancery Rule Register.

United States Circuit Court, District of Minnesota.

THOMAS W. PEARSALL, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, Defendant.

The plaintiff having filed a bill of complaint in this cause, on application of Henry J. Horn, solicitor, ordered that a writ of subpœna issue as herein prayed for.

Common Rule Register, page 266.
August 22nd, 1895.

18 And on the same day the following chancery subpœna was issued; and thereafter, on the 26th day of August, said subpœna was returned by the marshal served on the defendant and filed of record in said cause, to wit:

19 Original.

UNITED STATES OF AMERICA, }
District of Minnesota, Third Division. }

The President of the United States of America to Great Northern Railway Company, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Minnesota, on the first Monday of October next, at the city of St. Paul, then and there to answer the bill of complaint of Thomas W. Pearsall, a citizen of the State of New York, filed against you on the 22nd day of August, A. D. 1895. Hence fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 23rd day of August, 1895.

Seal U. S. Circuit Court, 3rd Division.

Issued at my office, in the city of St. Paul, under the seal of said circuit court, the day and year last aforesaid.

OSCAR B. HILLIS, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

MEMORANDUM.—The above-named defendant to enter its appearance in this suit, in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken *pro confesso*.

OSCAR B. HILLIS, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

HENRY J. HORN,
Complainant's Solicitor & of Counsel.

[Endorsed:] No. —. United States circuit court, district of Minnesota, third division. —— —— *vs.* —— ——. Chancery subpœna. (Original.) Returnable to October rules, 1895. Returned into the clerk's office and filed this 26 day of August, A. D. 1895. Oscar B. Hillis, clerk, by —— ——, deputy. Henry J. Horn, complainant's solicitor & of counsel.

20 UNITED STATES OF AMERICA, }
District of Minnesota. }

I hereby certify and return that I served the annexed chancery subpœna on the therein-named defendant, Great Northern Railway Company, by handing to and leaving a true copy thereof with W. P.

Clough, the vice-president of said defendant, personally, at Saint Paul, in said district, on the 23rd day of August, A. D. 1895.

R. T. O'CONNOR,
U. S. Marshal,
By J. M. REDDING, *Deputy.*

21 And on the 26th day of August, 1895, the following notice and application for injunction was returned served by the marshal and filed of record in said cause in words and figures following, viz:

22 UNITED STATES OF AMERICA, }
District of Minnesota, } *ss:*

I hereby certify and return that I served the annexed notice of application for injunction, &c., together with a copy of the bill of complaint herein, on the therein-named defendant, Great Northern Railway Company, by handing to and leaving a true and correct copy of each thereof with W. P. Clough, the vice-president of said defendant, personally, at Saint Paul, in said district, on the 23rd day of August, A. D. 1895.

R. T. O'CONNOR,
U. S. Marshal,
By J. M. REDDING, *Deputy.*

23 In the Circuit Court of the United States for the District of Minnesota, Third Division. In Equity.

THOMAS W. PEARSALL, Plaintiff,
vs.
GREAT NORTHERN RAILWAY COMPANY, Defendant.

Take notice that the above-named plaintiff, Thomas W. Pearsall, will apply to the said circuit court of the United States for the district of Minnesota, third division, in equity, on Wednesday, the 28th day of August, 1895, at 10 o'clock a. m., at chambers of the Hon. Walter H. Sanborn, judge thereof, in the United States custom-house building, at the northwest corner of Fifth and Wabasha streets, in the city of St. Paul, in the State of Minnesota, before the Honorable Walter H. Sanborn, judge of said court, or such other judge thereof as may be holding said court, for a preliminary injunction in the above action against the said defendant, The Great Northern Railway Company, or order of said court restraining the said defendant from entering into or carrying out a certain arrangement and undertaking between the said defendant and the holders of certain outstanding bonds of the Northern Pacific Railroad Company set forth in the bill of complaint of said plaintiff on file in said action, and from violating the rights of said plaintiff as a stockholder of said defendant, as set forth in said bill, and from doing the acts complained of by said plaintiff in said bill, a copy of which said bill is herewith served upon you; and that a writ of injunction may

issue from said court restraining and enjoining you, your officers, directors, attorneys, agents, and servants, in manner aforesaid, pending *in* said litigation or until the further order of said court, and for such other relief as may be proper in the premises.

24 The said application will be made on the said bill of complaint of said plaintiff and his affidavit or verification thereto attached.

To the Great Northern Railway Company.

Respectfully, HENRY J. HORN,
Solicitor for Complainant and of Counsel.

August 23rd, 1895.

(Endorsed:) Notice of application for injunction, &c. Filed Aug. 26th, 1895. Oscar B. Hillis, clerk.

25 And thereafter, on the 27th day of August, A. D. 1895, the following answer of the Great Northern Railway Company was filed of record in said cause, viz:

26 United States Circuit Court, District of Minnesota.

THOMAS W. PEARSALL, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, Defendant.

And now comes the defendant, The Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota and a citizen and resident of said State, and saving and reserving to itself all manner of right of exception to the manifold errors and insufficiencies in said bill of complaint contained, avers and says:

It admits the paragraphs contained in said bill of complaint from one to ten, inclusive.

It denies the allegations in paragraph eleven of the bill of complaint save and except as hereinafter alleged. On or about the 18th day of October, 1893, the Farmers' Loan and Trust Company, as trustee named in the mortgages executed by the Northern Pacific Railroad Company to secure the second, third, and consolidated mortgage bonds referred to in paragraph ten of the bill of complaint, commenced an action in the circuit court of the United States for eastern district of Wisconsin by filing its bill for the foreclosure of said mortgages and for the appointment of receivers of the property, franchises, and effects of said Northern Pacific Railroad Company. Afterwards bills were filed by said Farmers' Loan and Trust Company, as trustee, for a similar purpose in the difference circuit courts of the United States having jurisdiction by reason of the extension of lines of the Northern Pacific Company into and through territory within the limits of said circuits, and such actions are still pending, and in said actions receivers were appointed, who are now in the possession of the road.

27 The line of railway controlled and operated by defendant as lessee, and herein for convenience called defendant's line,

extends to Seattle or to a connection with Seattle, a large and prosperous city located on Puget sound. It does not extend to Winnipeg, in Canada, or to Tacoma and many other points in Washington, or to Portland and other business points in the State of Oregon, all of which are reached by the line of railway of the Northern Pacific Company. Defendant's railway extends to the boundary line between the United States and Canada at Neche and St. Vincent, distant over four hundred miles from St. Paul, and the lines to said points were constructed with a view of reaching business in the city of Winnipeg, in Canada, and obtaining traffic, both passenger and freight, from and to said city and other points in Canada.

At the present time it can acquire no right to extend its line of railway to Winnipeg or to any other Canadian points, and it has no means of sharing in the traffic of the city of Winnipeg and other Canadian points tributary to Winnipeg except by a connection with the line of railway owned and controlled by the Canadian Pacific Railroad Company and under an arbitrary division of earnings and upon onerous terms and conditions.

It would operate to the advantage of the defendant by increasing its traffic and earnings with a little increase over present expenses if it could obtain the right to bill its passengers and freight over the line of the Northern Pacific Company to Winnipeg and other points in Canada which are reached by its line. It cannot acquire such right by way of its present connection with the Canadian Pacific Railway Company or under existing circumstances upon reasonable and fair terms, and it is necessary to its interest that it should enter into a traffic arrangement with the Northern Pacific Company in order that it may reach Winnipeg and other Canadian points. The cities of Tacoma and Portland are large and
28 prosperous and are important shipping points for maritime commerce upon the Pacific ocean and afford a large traffic to the different transportation lines by rail and water with which they are connected, and such traffic will greatly increase as such cities grow in population and wealth.

In many other instances, in the States of Minnesota and Montana and elsewhere, the exchange of traffic between the said railway systems at the nearest junction point would greatly facilitate the movement and cheapen the cost of handling traffic and in many ways operate to the great benefit, profit, and advantage of said companies, especially in connection with the shipment of lumber, coal, minerals, and like class of commodities. It would be greatly to the advantage of defendant if its lines of railway extended to said cities of Tacoma and Portland and to other points in Washington and Oregon reached by the line of the Northern Pacific Railroad Company, and defendant expects and proposes to extend its line of railway to said points unless it can make an arrangement by which it can — said points and share in the traffic afforded by them, as under existing conditions it cannot do. An extension of defendant's line to Portland would require the construction of nearly two hundred miles of railroad, and to reach Portland, Tacoma, and other points, which would afford a large and profitable traffic, would re-

quire the construction of over four hundred miles of railroad, at a very large cost, nearly all of which, owing to the topography of the country, must necessarily be constructed on a line substantially parallel with the existing line of the Northern Pacific Company.

The construction of necessary buildings and tracks and the acquiring of necessary terminal grounds in said cities would cost a very large amount, and it would be to the advantage of this defendant and to the public should an arrangement be entered into for the interchange of cars and traffic between said lines of railroad under reasonable, fair, and legal terms and conditions and under which defendant can build and route its traffic from points on its
29 line and by way of connection with the Northern Pacific Company to said city and other points on its line.

At Spokane, in the State of Washington, a city having a population of about 30,000 people, the Northern Pacific Company owns a commodious passenger station and terminal grounds and tracts connected therewith. This defendant at the present time has no passenger station of its own with convenient tracks and facilities in said city. It is at present making use of the depot and terminal facilities of another company and it will be necessary for it, at large expense, in the near future, to construct a station and provide terminal facilities for its own use, unless it arranges with the Northern Pacific Company for the joint use of its depot and facilities as a union station, and there are many other points where the joint use as a union station would be advantageous in point of convenience and economy.

The tracks of defendant and the Northern Pacific Company between St. Paul and Sauk Rapids for a distance of about eighty miles are parellel, occupying substantially the same right of way, being but a few feet apart. The traffic of the large systems owned and operated by said companies respectively and consigned to Minneapolis and St. Paul or to connecting lines at said points is concentrated to a very large extent upon said tracks between said points and must be moved over them to said cities or connecting lines. The volume of such traffic will in the near future be such as to render it unsafe and unprofitable to both companies to handle the traffic that must necessarily pass between said points by said companies respectively over said tracks as single tracks. The use of said tracks as double tracks, having all the trains of each company moving in the same direction upon the same track, would greatly facilitate the handling of the business of said company and it could be transacted with greater convenience, economy, and safety to the public. Under a contract or arrangement in substance as herein set forth it would not only operate to the great benefit, profit, and advantage of the defendant company, but would likewise operate to the advantage and profit of the Northern Pacific Railroad
30 Company and to the public.

The defendant, with the approval of a large majority of its stockholders and the holders of a *l*ajority of the several classes of outstanding bonds secured by the said second, third, and consolidated mortgages of the said Northern Pacific Railroad Company,

have entered into an arrangement in substance as follows: The holders of the said several classes of bonds shall obtain a decree of foreclosure in said actions and for the sale of the railroad properties and franchises of the Northern Pacific Railroad Company, including its franchises to be a corporation, subject to the said divisional and general first mortgages mentioned in paragraph ten of the bill, and shall cause the same to bid in and be purchased by a committee of bondholders or their agents for the benefit of all the holders of said outstanding bonds secured by the mortgages so foreclosed, and shall cause a reorganization of the said railway franchises and property as a new corporation, either under the said acts and joint resolutions of Congress relating to the Northern Pacific Railroad Company or under some other proper and sufficient legislation of the United States or of some one or more States. Upon such foreclosure sale and reorganization the reorganized company may issue its bonds to an amount in the aggregate of $100,000,000 or over and its full-paid capital stock of $100,000,000, this defendant to guarantee, for the benefit of the holders of such bonds, the payment of the principal thereof, together with interest thereon to an amount in the aggregate of such interest guarantee not to exceed $6,200,000 per year, which guarantee shall, if required by said reorganization company, be written and executed upon the back of each of said bonds. Among other good and valuable considerations for such guarantee, and as a compensation for the risk to the stockholders of the defendant company, which may result by reason of said guarantee in the way of a possible diversion of a portion of the earnings of the defendant to make good its guarantee, the said reorganized
31 company shall transfer, or cause or procure to be tranferred by its stockholders, to the shareholders of the defendant company or to some person or corporation as trustee for their use one-half part of the capital stock of said reorganized company. The Northern Pacific Company shall join with the defendant in providing reasonable and adequate facilities for an interchange of cars and traffic between their respective lines, and shall interchange traffic with defendant and operate its trains to that end upon reasonable, fair, and lawful terms under joint tariffs or otherwise. The defendant shall have the right to bill and route its traffic, passengers, and freight from points on its line by way of such connections as now exist or may hereafter be constructed between said line and the Northern Pacific Company to Winnipeg, Tacoma, Portland, and all points in the different States through which the line of the Northern Pacific railroad extends and not reached by the line of this defendant. The defendant shall have the right to make use of the depot and terminal facilities of the Northern Pacific Company at Spokane Falls and other points, where such use shall be found to be convenient and economical, jointly with that company and upon reasonable, fair, and lawful terms, which shall insure to the defendant a large saving on the cost and expense which it must otherwise necessarily incur in constructing and operating depots and terminals of its own.

The defendant admits that it claims the right to carry out the

contract and right above stated, including the guaranty above stated, under and by authority of the laws of the State of Minnesota, and particularly under the authority of the several acts of the legislature alleged in said bill of complaint, and it denies that it is in any degree prohibited from making or carrying into effect the said arrangement by any law of the State of Minnesota whatever.

32 It admits the allegation in paragraph twelve of the bill as to the value of the shares of stock of the Great Northern Railway Company.

It denies that the consummation or execution of such arrangement will depreciate the value of the stock of the complainant or any other person in any sum whatever, or that the complainant or any person will be injured or damaged in any sum whatever, or that any injury will result to him or any other holder of stock similarly situated.

It admits the allegation in said paragraph twelve as to the request of the complainant to the defendant and its officers to desist in consum-ating or executing the arrangement aforesaid and their refusal so to desist.

The defendant further alleges that on or about March 4th, 1870, the legislature of the State of Minnesota duly passed an act entitled "An act in relation to the taxation and to facilitate the construction of the Northern Pacific railroad," which act was approved March 4th, 1870. Within ninety days from the approval of the said act the Northern Pacific Railroad Company filed with the governor the notice of the acceptance of the terms and conditions of the said act, as required therein, and thereafter constructed its said railroad in the State of Minnesota, relying thereon and pursuant to said powers.

M. D. GROVER,
DAVIS, KELLOGG & SEVERANCE,
JNO. B. & E. P. SANBORN,
Its Solicitors.

GREAT NORTHERN RAILWAY COMPANY,
By JAS. J. HILL.

C. K. DAVIS, *Of Counsel.*

33 STATE OF MINNESOTA, } ss:
County of Ramsey, }

James J. Hill, being duly sworn, deposes and says that he is one of the officers of the above-named defendant, to wit, its president; that he has read the foregoing answer, and that the same is true.

[Seal of Great Northern Railway Company.]

JAS. J. HILL.

Subscribed and sworn to before me this 27th day of August, A. D. 1895.

C. C. McELEVEE,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minnesota.*

(Endorsed:) Answer. Filed Aug. 27th, 1895. Oscar B. Hillis, clerk.

34 And thereafter, on the 29th day of August, the following proceedings were had and entered of record in said cause, viz:

35 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1895.

WEDNESDAY MORNING, *August 29th*, 1895.

Court opened pursuant to adjournment.

Present: Hon. Walter H. Sanborn, U. S. circuit judge; Hon. E. C. Stringer, U. S. district attorney; Hon. R. T. O'Connor, U. S. marshal; Louise B. Trott, deputy clerk.

THOMAS W. PEARSALL
vs.
GREAT NORTHERN RAILWAY COMPANY. } C. Eq. No. 680.

Complainant's motion for an injunction against the defendant as prayed for in his bill of complaint coming on to be heard, complainant appears by H. J. Horn and Austin H. Young, his solicitors, and the defendant by Davis, Kellogg & Severance, E. P. Sanborn, and M. D. Grover, its solicitors.

Thereupon said motion was argued on behalf of the complainant by H. J. Horn and on behalf of the defendant by M. D. Grover and C. K. Davis.

And, the argument not being concluded at the hour of adjournment, it is ordered that the further argument of the same hereby is postponed until tomorrow morning at 10 o'clock.

Ordered that this court do now adjourn until tomorrow morning at 10 o'clock.

A true record.

Attest: OSCAR B. HILLIS, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

36 And thereafter, on the 29th day of August, A. D. 1895, the following proceedings were had and entered of record in said cause, viz:

37 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1895.

THURSDAY MORNING, *August 29th*, 1895.

Court opened pursuant to adjournment.

Present: Hon. Walter H. Sanborn, U. S. circuit judge; Hon. E. C. Stringer, U. S. district attorneys; Hon. R. T. O'Connor, U. S. marshal; Oscar B. Hillis, clerk.

THOMAS W. PEARSALL
vs.
GREAT NORTHERN RAILWAY COMPANY. } C. Eq. No. 680.

This day again come the parties herein, by their respective solicitors; whereupon, complainant's motion for an injunction as prayed for in the bill coming on to be further heard, the same is further argued on behalf of the defendant by C. K. Davis, C. A. Severance, and E. P. Sanborn.

And, the hearing thereof not being concluded at the hour of adjournment, it is ordered that further argument thereof be, and the same hereby is, postponed until tomorrow morning at 10 o'clock.

Ordered that this court do now adjourn until tomorrow morning at 10 o'clock.

A true record.

Attest: OSCAR B. HILLIS, *Clerk.*

38 And thereafter, on the 30th day of August, A. D. 1895, the following proceedings were had and entered of record in said cause, viz:

39 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1895.

FRIDAY MORNING, *August 30th,* 1895.

Court opened pursuant to adjournment.

Present: Hon. Walter H. Sanborn, U. S. circuit judge; Hon. E. C. Stringer, U. S. dist. attorney; Hon. R. T. O'Connor, U. S. marshal; Oscar B. Hillis, clerk.

THOMAS W. PEARSALL
vs.
GREAT NORTHERN RAILWAY COMPANY. } Eq. C. No. 680.

This day again come the parties herein, by their respective solicitors, and, complainant's motion for an injunction as prayed for in his bill coming on for further hearing, the same is further argued on behalf of the complainant by Austin H. Young, Esq., and Henry J. Horn, and on behalf of the defendant by M. D. Grover; thereupon the same is duly submitted and by the court taken under advisement.

* * * * * * *

40 And thereafter, on the 14th day of September, A. D. 1895, the following opinion of Judge Sanborn overruling and denying complainant's motion for an injunction was filed of record in said cause, viz:

41 In the Circuit Court of the United States for the District of Minnesota.

THOMAS W. PEARSALL, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, Defendant.

Mr. A. H. Young and Mr. H. J. Horn, for complainant.

Mr. M. D. Grover, Messrs. Davis, Kellogg & Severance, and Mr. E. P. Sanborn, for defendant.

Syllabus.

1. An accepted act of incorporation of a private corporation is a contract between the State and the corporation, and any law of a State which destroys or impairs any valuable franchise granted by such an act violates section 10, article 1, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts, and is ineffective unless the right so to destroy or impair the franchise is reserved by the State before or at the time the charter is granted.
2. The Territory and State of Minnesota, by chapter 160 of the Laws of the Territory for 1856 and chapter 4 of the Special Laws of the State for 1865, granted to the Minneapolis & St. Cloud Railroad Company the right to build, operate, and lease railroads and the right to consolidate its stock, its railroads, or its property with the stock, the railroads, or the property of any other railroad corporation. These grants were accepted by the corporation prior to 1866, and this corporation has, by a change of name, become the defendant, The Great Northern Railway Company.

42 3. The right to consolidate with another railroad corporation includes the right to make a fair and lawful agreement with it for the interchange of traffic and for the joint use of terminal facilities, the right to buy one-half of its stock for the shareholders of the purchaser, and the right to guarantee the payment of its bonds.

4. This right to consolidate was a valuable and vested right of the corporation after its acceptance of the grants, and section 17 of the act of 1856, which is, "This act is hereby declared to be a public act and may be amended by any subsequent Legislative Assembly in any manner not destroying or impairing the vested rights of said corporation," did not reserve to the Territory or to the State the power to impair or destroy this vested right.
5. The use of a franchise granted to a corporation is not a condition precedent to the vesting in the corporation of the right to use it.
6. If chapter 29 of the Laws of Minnesota for 1874 and section 3 of chapter 94 of the Laws of Minnesota for 1881, which prohibit any railroad corporation from consolidating with or purchas-

ing the stock of any corporation which owns or controls a parallel or competing line of railroad, should be construed to be amendments of the acts cited, they are broad enough in their terms to prohibit the defendant corporation from consolidating with any corporation which owns or controls the Northern Pacific system of railroads and from purchasing one-half the stock of such a corporation for the use of its shareholders.

7. If they should be construed to be such amendments, they would impair to that extent the vested right of the defendant corporation to consolidate with any railroad corporation whatever which was granted to it by its charter, and they would be ineffective, because they would be in violation of the constitutional provision that no State shall pass any law impairing the obligation of contracts, and also of the contract in
43 the act of incorporation that the State would make no amendment destroying or impairing the vested rights of this corporation.

8. If these acts should not be construed to be amendments of the charter, they leave this right of the defendant to consolidate unaffected.

9. In either case the agreement made by the Great Northern Railway Company to purchase one-half the stock of a new corporation which is to own or to control and operate the Northern Pacific system of railroads, many of which are lines either parallel to or competing with the lines owned or controlled and operated by the Great Northern Railway Company, to make a just and fair traffic agreement with this corporation and to guarantee the payment of its bonds is not rendered illegal by these acts, and its performance cannot lawfully be enjoined on account of them.

Statement.

This case came before the court upon a motion for a preliminary injunction upon a bill and answer that disclose the following facts:

In 1856 the legislature of the Territory of Minnesota passed "An act to incorporate the Minneapolis & St. Cloud Railroad Company." Laws of Minnesota 1856, ch. 160. By that act the Territory granted to that corporation the right to be a corporation, the right to acquire, by purchase, gift, grant, devise, or otherwise, to hold, and to convey all such estate and property, real and personal, as should be necessary or convenient to carry into effect the object and purposes of the corporation (sec. 1); the right to construct and operate certain railroads (secs. 2 and 6); the right to be part owner or lessee of any railroad in the Territory (sec. 6); the right to exercise the power of eminent domain (sec. 7), and the right to connect with and to use any railroad running in the same general direction as any of its proposed railroads (sec. 12). The last section of the act is:

"SECTION 17. This act is hereby declared to be a public act and may be amended by any subsequent Legislative Assembly in any manner not destroying or impairing the vested rights of said corporation."

In 1865 the legislature of the State of Minnesota passed an act to amend the act of 1856, *supra* (Special Laws of Minnesota, 1865, ch. 4). By that act the State granted to the Minneapolis & St. Cloud Railroad Company the right to connect with or adopt as its own any other railroad running in the same general direction with either of its main or branch lines (sec. 3); the right to consolidate the whole or any portion of its capital stock with the capital of any other railroad corporation having the same general direction or location (sec. 8); the right to consolidate any portion of its road and property with the franchises of any other railroad company or any portion thereof (sec. 9), and the right to consolidate the whole or any portion of its lines of railroad and the property pertaining thereto with the rights, powers, franchises, grants, and effects of any other railroad (sec. 12).

It is alleged by the bill and admitted by the answer that the Minneapolis & St. Cloud Railroad Company was duly incorporated under and complied with the act of 1856 and its amendments, and that it duly accepted the provisions of the act of 1865 immediately after its passage. Subsequent to the year 1879 it constructed and put in operation a railroad from St. Cloud to Hinckley, in the State of Minnesota. After this railroad was constructed it changed its name, by permission of the legislature of Minnesota, to the Great Northern Railway Company, and it is the defendant in this suit. It now owns some, leases some, and operates and controls all of the lines of railroad of the Great Northern Railway system. This system comprises lines of railroad which extend from St. Paul and Duluth, in the State of Minnesota, and from Superior, in the State of Wisconsin, across the States of Minnesota, North Dakota, Montana, Idaho and to the towns of Everett and Seattle, in the State of Washington, with many branch and connecting lines, but none of these lines reach Tacoma, in the State of Washington, or Portland, in the State of Oregon, or Winnipeg, in Canada. The Northern Pacific Railroad Company is a corporation organized under acts of Congress and it owns some and through its receivers controls and operates all of the lines of railroad of the Northern Pacific Railroad system. This system comprises lines of railway extending from St. Paul, in Minnesota, and from Ashland, in Wisconsin, across the States of Minnesota, North Dakota, Montana, and Idaho to Tacoma, in the State of Washington, and Portland, in the State of Oregon, with many branch and connecting lines, one of which extends to Winnipeg, in Canada. The aggregate mileage of each of these systems of railroad is about forty-five hundred miles and some of the lines of each of these systems are parallel to and some of them compete with lines of the other system. The Northern Pacific Railroad Company is insolvent and its road and property are in the hands of receivers, who were appointed by the courts at the instance of the

holders of bonds which are secured by the second, third, and consolidated mortgages upon its property. The trustee for these bondholders has commenced suits to foreclose these mortgages and the receivers are in possession under appointments in these foreclosure suits. The holders of a majority of the several classes of bonds secured by these three mortgages have agreed with the Great Northern Railway Company to procure a foreclosure sale of the property covered by these mortgages to a committee of these bondholders for the benefit of all the holders of bonds secured by said mortgages; to organize a new corporation, in which they will cause the title to all of said mortgaged property to be vested, subject to the lien of the first and divisional mortgages of the Northern Pacific Railroad Company; to cause the new corporation to make a fair and reasonable traffic agreement with the defendant for an interchange of traffic between the two systems and for the joint
46 use of the terminal facilities of each whenever such use is convenient and economical for both; to cause the new corporation to issue its bonds to the amount of $100,000,000 or more, secured by a lien upon its property; to issue its full-paid capital stock to the amount of $100,000,000, and to cause its stockholders to transfer to the stockholders of the Great Northern Railway Company or to some one for their use one-half of this stock. In consideration of this agreement the defendant corporation has promised to enter into the traffic agreement with the new corporation and to guarantee the payment of the principal of its bonds and $6,200,000, interest thereon annually, and it is about to perform this promise against the demand and protest of the complainant. The complainant is the owner of five hundred shares of the capital stock of the defendant corporation, which is now worth more than $62,500, and he avers that if this agreement is performed his stock will be depreciated more than five thousand dollars. He brings this suit on behalf of himself and all other stockholders similarly situated who may join with him and alleges that this agreement is unlawful because it is beyond the powers of the corporation to make or perform it because it is in violation of chapter 29 of the Laws of Minnesota for 1874, which is, "No railroad corporation or the lessees, purchasers, or managers of any railroad corporation shall consolidate the stock, property, or franchises of such corporation with or lease or purchase the works or franchises of or in any way control any other railroad corporation or having under its control a parallel or competing line, nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line, and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury, as in other civil issues," and because it is in violation of section 3, chapter 94, of the Laws of Minnesota for 1881, which is, "No
47 railroad corporation shall consolidate with, lease or purchase, or in any way become owner of or control any other railroad corporation or any stock, franchises, rights of property thereof which owns or controls a parallel or competing line," and he prays

that the defendant may be enjoined from taking any steps toward its performance.

The defendant answers that it has ample power to make and perform this agreement under its charter; that the true construction of the provisions of the acts of 1874 and 1881, cited, is that they do not amend or affect its charter, and that if the opposite construction is adopted they are void in so far as they prohibit or affect its right to make and perform this agreement because they are in violation of section 10, article 1, of the Constitution of the United States. The complainant replies that the right to so amend the charter of this defendant as to prohibit the performance of this agreement was reserved to the State by section 17 of the act of 1856, under which the defendant was incorporated, and that the laws of 1884 and 1881 were a constitutional exercise of this reserved right.

SANBORN, *Circuit Judge:*

If there is any principle of jurisprudence that is beyond dispu[te] and discussion in this nation, it is this:

An accepted act of incorporation of a private corporation is a contract between the State and the corporation. Any law of a State which impairs or destroys a valuable franchise granted by such an act impairs the obligation of the contract and is without effect, unless, before or at the time of the passage of the act, the State reserved the right to enact such a law. Constitution of the United States, art. 1, sec. 10; Dartmouth College case, 4 Wheat., 518, 684, 693, 695, 703; State Bank of Ohio *v.* Knoop, 16 Howard, 369, 380; Binghampton Bridge case, 3 Wall., 51; Pablo Sala *v.* New Orleans, 2 Wood., 188; Wilmington Railroad *v.* Reid,
48 13 Wall., 264; New Orleans Water Works Company *v.* Rivers, 115 U. S., 674; New Jersey *v.* Yard, 95 U. S., 104; New Orleans Gas Company *v.* The Louisiana Light Company, 115 U. S., 650; Monongahela Navigation Company *v.* U. S., 148 U. S., 312; Mayor of Houston *v.* Houston Street R'y Company, 19 S. W. Rep., 127, 129; Smith *v.* Atchison, T. & S. F. R. R. Co., 64 Fed. Rep., 272, 275; Boston & Lowell Railroad Corporation *v.* Salem & Lowell Railroad Company, 2 Gray, 1; Zimmer *v.* State, 30 Ark., 677; McRoberts *v.* Washburne, 10 Minn., 23; Washington Bridge Co. *v.* State, 18 Conn., 53; Citizens' St. R'y Co. *v.* City R'y Co., 56 Fed., 746; Citizens' R'y Co. *v.* City of Memphis, 53 Fed., 715.

This contract is threefold. It is a contract between the State and the corporation, between the State and the stockholders of the corporation, and between the corporation and its stockholders. If the corporation threatens to do an act beyond the powers granted to it, in violation of law and in violation of this contract, the stockholders are entitled to the mandate of the court to prevent it, and if, as the complainant alleges, the performance of the agreement which the defendant has made with the bondholders of the Northern Pacific Railroad Company is illegal the complainant may successfully maintain this action for an injunction against it. Du Pont *v.* Northern Pacific Railroad Company, 18 Fed., 467, 470; Beech on Private Corporations, sec. 429, and cases cited.

It goes without saying that the right to make and execute the agreement assailed in this suit was a valuable privilege, and, if it is included in one of the franchises granted to the defendant, that was a valuable franchise. The principle questions presented in this case, therefore, are: Was the right to perform this agreement granted to the defendant by its act of incorporation and the subsequent amendment thereof in 1865? If chapter 29 of the Laws of Missouri for 1874 and sec. 3 of chapter 94 of the Laws of Minnesota for 1881 were amendments of this charter, does either of them
49 prohibit the exercise of this right? Was the right to make such an amendment to the charter reserved to the State in the charter? Are the acts of 1874 and 1881 to be construed as amendments to this charter? These questions will be considered in the order in which they have been stated so far as it shall be necessary in order to determine whether or not an injunction ought now to issue as prayed.

An agreement between railroad corporations for an interchange of traffic at connecting and for the joint use of terminal grounds and facilities on reasonable terms is a lawful contract. It is in accord with the public policy of the nation and is a just and rational method of fulfilling the requirements of the "act to regulate commerce," approved February 4th, 1887. 27 Stat., 377; Sup. Rev. Stat., 529; United States *v.* Trans-Missouri Freight Association, 10 C. C. A., 15, 78, 79. This is a character of a traffic contract contemplated by the agreement here assailed. Ample power to make such a contract and to pay for it by a guaranty of the bonds of the new corporation was granted to this defendant in the general authority to acquire such property as was necessary or convenient to carry into effect the object and purposes of a corporation, to operate a railroad, to become part owner or lessee of any railroad, and to connect with and use any railroad running in the same general direction as any of its roads which is found in section- 1, 2, 5, and 12 of the act of 1856. Laws of Minnesota, 1856, ch. 160, Zabriskie *v.* Cleveland, &c., R. Co., 23 Howard, 381, 390, 399; Green Bay & Minnesota R. Co. *v.* Union Steamboat Company, 107 U. S., 98; Railroad Company *v.* Howard, 7 Wall., 392, 411; Railway Companies *v.* Keokuk Bridge Company, 131 U. S., 371; Fort Worth City Company *v.* Smith Bridge Co., 151 U. S., 294, 299, 301; Harrison *v.* Union Pacific Railway Co., 13 Fed., 522, 524; Todd *v.* Kentucky Union Land Co., 57 Fed., 47, 60; Marbury *v.* Kentucky Union Land Company, 10 C. C. A., 393; Smead *v.* Indianapolis, &c., R. Co., 11 Ind., 104, 112; Ellerman *v.* Chicago Junction Railways &
50 Union Stock Yards Co., 49 N. J. Eq., 217, 248, 250; Rogers L. & M. Works *v.* Southern Railroad Association, 34 Fed., 278; Low *v.* Central Pacific R. Co., 52 Cal., 53, 58; Opydke *v.* Pacific Railroad, 3 Dillon, 55, 70, 72.

But this agreement is more than a traffic contract. It is an agreement that the defendant shall have the traffic contract for itself and one-half of the stock of the new corporation for its shareholders in consideration of its guarantee of the payment of the bonds of that corporation. Does the charter give it power to buy this stock

in this way? The amendment of its charter made to and accepted by it in 1865 grants to it the unrestricted right to consolidate with any other railroad corporation in every way in which the legislature could conceive that such a consolidation might be made. Special Laws of Minnesota, 1865, ch. 4, secs. 8, 9, and 12. Section 8 gives it the power to consolidate the whole or any portion of its capital stock with the whole or any portion of the capital stock of any other railroad having the same general location or direction or to become merged therein by way of substitution. Section 9 gives it the power to consolidate any portion of its road and property with the franchises of any other railroad company or any portion thereof, and section 12 gives it the power to consolidate the whole or any portion of its main lines or branch railroad and all the rights, powers, franchises, grants, and effects pertaining to such roads with the rights, powers, franchises, grants, and effects of any other railroad either within or without the State.

This unrestricted right to consolidate with any other railroad corporation includes the power to buy and destroy the stock of that corporation and to pay for it by the issue to its shareholders of stock of the defendant. It includes this power because a consolidation may be legally effected in this way. Morawetz on Corporations, sec. 942. If the defendant may buy all of the stock of the corporation it may buy half of it. If it may pay for such stock
51 by the issue of its own stock it may do so by the payment of money or by an absolute or conditional promise to pay money for it. The agreement in question contemplates the purchase of half of the stock of the new corporation and payment for it by a conditional promise to pay a certain amount of the debts of that corporation if the latter fails to do so. The whole is greater than and includes all its parts, and, in like manner, the right to consolidate with a corporation includes a right to purchase a part or all of its stock for the use of shareholders of the purchasing company and the right to pay for it by a guarantee of the payment of its bonds. There is no escape from the effect of this proposition on the ground that the defendant does not intend to completely consolidate with the new corporation, and hence that it has no authority to exercise the powers which it might exercise if it had that intention, nor on the ground that the new corporation a part of the stock of which is to be purchased is yet to be incorporated. The right granted to this defendant was to consolidate with any railroad corporation, and it was not limited by the time or the parties by whom the latter was or should be organized. One who has authority to sell and convey another's land is not deprived of his authority to make a valid agreement of sale because he did not intend to convey nor of his authority to convey because he first makes an agreement to sell in order that he may exercise his power to convey. The steps the defendant has agreed to take in this case tend toward the accomplishment of the purposes and objects of a consolidation, and they might all be lawfully taken in perfecting an actual consolidation. Upon the principle that the whole includes all its parts, the power to take them must be held to be in-

cluded in the general right to consolidate granted by this charter. If there could ever have been any doubt of this proposition, it is now supported by judicial authority so eminent that this court ought not to depart from it: Branch *v.* Jesup, 106 U. S., 468,
52 478; Marbury *v.* Kentucky Union Land Co., 10 C. C. A., 393, 404, 407; Todd *v.* Kentucky Union Land Co., 57 Fed., 47, 56, 67; Green Bay & Minnesota Railroad Company *v.* Union Steamboat Company, 107 U. S., 97, 98, 100; Hill *v.* Nisbet, 100 Ind., 341; Smead *v.* Railroad Company, 11 Ind., 104.

An exhaustive and instructive opinion upon this question by the circuit court of appeals of the sixth circuit will be found in Marbury *v.* Kentucky Union Land Company, *supra*.

Does chapter 29 of the act of 1874 or section 3 of chapter 94 of the act of 1881 in terms prohibit the performance of this agreement if either of them is to be construed to be an amendment of this charter? Section 3 of the act of 1881 provides that no railroad corporation shall consolidate with, lease, or purchase or in any way become the owner of or control any other railroad corporation or any stock thereof which owns or controls a parallel or competing line. The new corporation which this agreement contemplates will own or control many lines of railroad that are competing and some that are parallel with lines of the defendant. The defendant proposes to purchase one-half of the stock of this corporation and a traffic agreement with it and to pay therefor by a guaranty of its bonds. It matters not that it proposes that the stock purchased shall be issued to its shareholders. The defendant railroad company buys it, and if it does not propose to own and control it it does propose that its owners shall own and control it, and that is not an essential difference in the practical operation and effect of the scheme. The conclusion is that if section 3 of the act of 1881 is an amendment of the defendant's charter the performance of this agreement falls within its prohibition.

Was the right to impair or destroy the franchise to consolidate with another corporation reserved by the State at or before the granting of the charter? There was no such reservation unless it is contained in section 17 of the act of 1856, which reads:
53 "This act is hereby declared to be a public act, and may be amended by any subsequent Legislative Assembly in any manner not destroying or impairing the vested rights of said corporation." The contention of counsel for the complainant that this section reserves to the State the power to take from the corporation all of its rights under the charter except those rights of property which it has acquired by purchase or otherwise from parties other than the State cannot be successfully maintained. Such a construction strikes from the section the words "not destroying or impairing the vested rights of said corporation," and gives it the effect of a reservation of the right to amend in any manner. The rights of property acquired from parties other than the State could not be taken from its stockholders without consideration under the reservation of the unlimited power to alter, amend, or repeal the charter. Greenwood *v.* Freight Company, 105 U. S., 13, 19; Kent *v.*

Quicksilver Mining Co., 78 N. Y., 159, 182; Close *v.* Noye, 26 N. Y. Sup., 93; Hawthorne *v.* Calef, 2 Wall., 10. But the court is forbidden to strike from this provision of the act the limiting clause "not destroying or impairing the vested rights of said corporation" by the familiar rule that all the words of a law should have effect rather than that part should perish by construction. Knox County *v.* Morton, 68 Fed., 790; City of St. Louis *v.* Lane, 110 Mo., 254, 258.

Again, a corporation has vested rights in all the valuable franchises granted to it by the State. The State excepted none of these rights from the provision of section 17. That provision was that it might amend the charter in any manner that did not and that it would not amend it in any manner that did effect any of the vested rights of the corporation. The conclusive presumption from the fact that the legislature excepted none of these rights from this provision is that they intended to except none, and it is not in the power of the court to do so. Madden *v.* Lancaster County,
54 12 C. C. A., 556, 573; Morgan *v.* City of Des Moines, 60 Fed., 208; McIver *v.* Ragan, 2 Wheat., 25, 29; Bank *v.* Dalton, 9 Howard, 522, 528; Vance *v.* Vance, 108 U. S., 514, 521. Moreover, if this task was undertaken the unanswerable question would immediately present itself, What rights shall be excepted and what shall not be?

It is difficult to perceive, after a patient examination of all the authorities cited on both sides of this case and a careful consideration of the question, how this provision of the contract can be held to reserve to the State the right to pass any law which in the absence of this provision would have been in violation of section 10, article 1, of the Constitution. The plain effect of the provision is that the State will not amend this charter in any way that will impair or destroy the vested rights of the corporation, and that it may amend it in any other way. The provision of the Constitution is that no State shall pass any law impairing the obligation of contracts. Any amendment that does not impair a vested right of the corporation under this contract does not impair its obligation, and any amendment that does impair its obligation necessarily impairs a vested right. Smith *v.* Atchison, T. & S. F. R. Co. *Co.*, 64 Fed., 272, 275.

An application to section 17 of the ordinary rules of interpretation demonstrates that this is the true construction of the section. One of these rules is that the court may place itself in the place of the contracting parties for the purpose of discovering their intention, and that when that intention is manifest it will control regardless of technical rules of construction. Binghampton Bridge case, 3 Wall., 78, 80; Boston & Lowell Railroad Corporation *v.* Salem & Lowell Railroad Co. *Co.*, 2 Gray, 1; Prentice *v.* Duluth Storage & Forwarding Company, 7 C. C. A, 293; 58 Fed., 437, 443; Gunn *v.* Black, 8 C. C. A., 541; 60 Fed., 158; Witt *v.* St. Paul & Northern Pacific R'y Co., 38 Minn., 122, 127; Driscoll *v.* Green, 59 N. H., 101; Johnson *v.* Sampson, 36 N. H., 91; Walsh *v.* Hill, 38 Cal., 481, 486,
55 487. Let us apply this rule. In 1819, in the Dartmouth Col-

lege case, the Supreme Court had declared that the franchise granted to the trustees of Dartmouth College to elect their own successors was a valuable franchise which the State of New Hamphire was prohibited by the Constitution from destroying or impairing. In his opinion in that case Mr. Justice Story had conclusively answered the argument now made by complainant's counsel in this case, that the only rights secured by this section are rights of property acquired from parties other than the State. He said: "A grant of franchise is not, in point of principle, distinguishable from a grant of any other property." 4 Wheat., 684. At page 697 he said: "Another objection growing out of and connected with that which we have been considering is that no grants are within the constitutional prohibition except such as respect property in the strict sense of the term—that is to say, beneficial interests in lands, tenements, and hereditaments, &c., which may be sold by the grantees for their own benefit—and that grants of franchises, immunities, and authorities not valuable to the parties as property are excluded from its purview. No authority has been cited to sustain this distinction, and no reason is perceived to justify its adoption." At page 699 he said: "In respect to corporate franchises they are, properly speaking, legal estates vested in the corporation itself as soon as it is *in esse*. They are not merely naked powers granted to the corporation, but powers coupled with an interest. The property of the corporation rests upon the possession of its franchises, and whatever may be thought as to the corporators it cannot be denied that the corporation itself has a legal interest in them," and at page 701 he said: "Could the legislature of New Hampshire have seized the land given by the State of Vermont to the corporation and appropriated to uses distinct from those intended by the charity against the will of the trustees? This question cannot be answered in the affirmative until it is established that the legislature may lawfully take the property of A and give it to B,
56 and if it could not take away or restrain the corporate funds upon what pretence can it take away or restrain the corporate franchises? Without the franchises the funds could not be used for corporate purposes, but without the funds the possession of the franchises might still be of inestimable value to the college and to the cause of religion and learning." In 1845 the legislature of the State of Ohio had passed a general banking law which required banks to pay to the State six per cent. of their semi-annual dividends in lieu of all other taxes. In 1847 the State Bank of Ohio had been incorporated under this law. In 1851 the legislature of Ohio had passed a general law which required banks in that State to pay a larger amount of taxes than was required by the law of 1845. In 1853 the Supreme Court had held that this provision of the law of 1851, which increased the tax, was unconstitutional, and that the bank was not required to pay the increased amount. Mr. Justice McLean, in delivering the opinion of the Supreme Court, had said: "Every valuable privilege given by the charter and which conduced to an acceptance of it and an organization under it is a contract which cannot be changed by the legislature where the

power to do so is not reserved in the charter." State Bank of Ohio *v.* Knoop, 16 Howard, 369, 380. In 1856 the legislature of the Territory of Minnesota convened at St. Paul, more than two hundred miles from the nearest railroad, with an area of fertile but unoccupied lands stretching to the north and west of them so vast and so distant from the commercial centers that there was no hope of its occupation or cultivation until its products could be moved and the needs of its occupants could be supplied through railroad transportation. In this state of the law and of the territory they represented this legislature sat bidding for the construction and operation of railroads through their territory. They offered to this railroad company the right to build and operate a railroad in a northerly direction from Minneapolis and in a southerly direction by way of West St. Paul to Iowa and the
57 right to connect with and use any railroad running in the same general direction as either of these lines. Nine years passed, but no railroad had been built. The legislature amended their offer and increased their bid. In addition to all the franchises granted in 1856 they offered to this corporation in various forms the right to consolidate with any other railroad corporation whatever. These offers were accepted and became the contract between the State and the company. The original contract of 1856 contained and the amended contract of 1865 carried with it the agreement that it might be amended by the State in any manner not destroying or impairing the vested rights of the corporation. The legislatures of some of the States had attempted to revoke or impair franchises that had been granted to corporations and had been prevented from so doing by the decisions of the Supreme Court. That court had declared that every valuable privilege given by the charter which conduced to an acceptance of it or an organization under it was a contract which could not be changed by the legislature where the power to do so was not reserved in the charter. Mr. Justice Story had declared that corporate franchises were legal estates vested in the corporation itself as soon as it was *in esse*. The legislature of Minnesota were offering every inducement in their power to secure the operation of railroads. What did they mean when they agreed with this corporation that they would not so amend its charter as to destroy or impair its vested rights? The question carries its answer. The conclusion is irresistable that they meant that they would never so amend that charter as to impair or destroy any franchises or rights of the corporation which the Supreme Court had declared vested as soon as it was accepted and rested under the protection of the Constitution.

Another canon of interpretation is that where the language of a contract or statute is unambiguous it must be held to mean what it clearly expresses, and no strained or refined rule of construc-
58 tion can be applied to any part of it to defeat it. Knox County *v.* Morton, 68 Fed., 789; United States *v.* Fisher, 2 Cranch, 358, 399; Railway Company *v.* Phelps, 137 U. S., 528, 536; Bedsworth *v.* Bowman, 104 Mo., 44, 49; Warren *v.* Paving Co., 115 Mo., 572, 576. The natural and obvious meaning of the language

contained in section 17 is that the legislature reserved the right to amend this charter in matters of form, procedure, and in other respects that would not affect the substantial rights of the corporation, and that they made no farther reservation. Counsel for plaintiff urge as an objection to this construction that it leaves the rights of the State and of the corporation just where they would have been if section 17 had not been enacted. This is true, but this is where section 17 leaves these rights when every word it contains is given its natural and obvious meaning. This construction makes the section declaratory of the law as the Supreme Court had interpreted it, and it is not unusual for legislatures to pass acts declaratory of the general law. The circumstances under which the act was passed point with almost compelling force to the conclusion that this section was added to define and limit the extent of the power of amendment and to assure the corporation that its substantial rights would not be assailed by the Territory or the State, and in any event there is nothing in the act itself or in the circumstances surrounding its enactment to warrant this court in repealing or ignoring both the general law and the statute which plainly declared it.

Another contention of counsel for the complainant is that section 17 should be construed to read, "This act is hereby declared to be a public act and may be amended by any subsequent Legislative Assembly in any manner not destroying or impairing any rights of said corporation which have been exercised at the time of the amendment," and they maintain that because the right to consolidate with another corporation had not been exercised by the defendant
59 when the acts of 1874 and 1881 were passed that right was excepted from the saving clause of section 17 and was lawfully restricted. In support of this proposition they cite Tomlinson *v.* Jessup, 15 Wall., 454; Miller *v.* State, 15 Wall., 478; Hamilton Gaslight & Coke Co. *v.* City of Hamilton, 13 Sup. Ct. Rep., 90; Shields *v.* Ohio, 95 U. S., 319, 324; Railroad Company *v.* Maine, 96 U. S., 499, 510; Greenwood *v.* Freight Co., 105 U. S., 13; Bridge Company *v.* United States, 105 U. S., 470; Spring Valley Water Works *v.* Schottler, 110 U. S., 347; Crease *v.* Babcock, 23 Pickering, 334; In the Matter of Oliver Lee & Company's Bank, 21 N. Y., 9; Union Improvement Company *v.* Commonwealth, 69 Penn. St., 140; Bangor, Oldtown & Milford Railroad Co. *v.* Smith, 47 Me., 85; City of Roxbury *v.* Boston and Providence Railroad Co., 6 Cush., 424, 431; Macon, &c., Railroad Co. *v.* Stamps, 11 S. E. Rep., 442; Central Railroad and Banking Company *v.* State of Georgia, 54 Ga., 401. These authorities, however, do not make this distinction or support this proposition. A careful and patient examination of them discloses the fact that in every case except that of Bridge Company *v.* United States, 105 U. S., 470, the State had, prior to or at the time of the grant of the charter under consideration, expressly reserved to itself the unlimited power to alter or repeal it, and in Bridge Company *v.* United States, Congress had reserved the right to withdraw its assent to the construction of the bridge or to direct necessary modifications or alterations thereof, and its subsequent action, which was sustained, simply required some changes to be made in the con-

struction of the bridge. These case- rest upon the acknowledged principle that when the State, before or at the time of the grant of a charter to a corporation, expressly reserves the right to alter or repeal it, that reservation becomes a part of the contract between the State and the corporation, and the franchises are then by the express terms of the contract revocable at the will of the State. This case is not ruled by these authorities, because, as we have seen, the Territory and State did not reserve the power to alter or repeal this charter, but limited its reservation to the power to amend it "in any manner not destroying or impairing the vested rights of said corporation."

60

Every valuable franchise granted to this corporation vested in it when the act making the grant was accepted. The three great franchises granted were the franchises to build a railroad, to operate a railroad, and to consolidate with another railroad corporation. The chief value of every franchise is in its present or future use. It derives little value from the past. Section 17 was in effect a covenant against any amendment that would impair any vested right of this corporation. Can it be successfully maintained that the right to a franchise is never a vested right until the franchise is used? Has a railroad corporation after acceptance of its charter and organization no vested right to condemn land for its road until it has condemned some; no vested right to build its road until it has built some; no vested right to run its engines and cars until it has run some; no vested right to collect tolls until it has collected some, and no vested right to consolidate with another corporation (where that franchise is granted in the charter) until it has consolidated with one? These questions carry their answers. There is no distinction in reason or in the authorities between the right to a franchise that has been and the right to one that has not been used before the latter is forfeited for non-user. The legal presumption is that each of the valuable franchises granted in a charter formed a part of the consideration for its acceptance and the investment of capital in the stock of the corporation, and as it is impossible to determine which of them formed the chief inducement the right to those exercised first and the right to those used last vest alike in the corporation as soon as the grant which gives them is accepted, and they are all equally protected by the constitutional inhibition to impair the obligation of the contract both before and after they are used. Pablo Sala *v.* New Orleans, 2 Woods, 188, and Zimmer *v.* State, 30 Ark., 677, are cases in which rights to franchises that had never been exercised at all were held to be vested rights, and State legislation which attempted to impair these franchises before they were exercised was held to be in violation of the constitutional prohibition, and all cases of this class, from the Dartmouth College case down, were necessarily cases in which State legislation attempted to impair the value of those portions of the franchises that had not been used, the value of their use in the future and not in the past. In Pablo Sala *v.* New Orleans, *supra*, the franchise for the city to issue bonds to pay for the water works, which was contained in the charter of the water works company, was impaired by onerous restrictions be-

61

fore it was exercised, and the act which restricted it was held to be ineffective. In Zimmer *v.* State the State of Arkansas attempted to impair by a subsequent constitution the franchise of a railroad corporation to consolidate with another before that franchise had been exercised, but the supreme court of that State held that this franchise could neither be withdrawn nor impaired by either a law or a constitution of the State. A franchise to consolidate with another corporation is incorporeal and intangible, but it is property, and often valuable property. Such a franchise cannot be taken for public use without condemnation and the payment of just compensation. Wilmington Railroad *v.* Reid, 13 Wall., 264; Montgomery County *v.* Bridge Company, 110 Penn. St., 54; Monongahela Navigation Company *v.* United States, 148 U. S., 312, 341. In the case last cited Mr. Justice Brewer, delivering the opinion of the Supreme Court and speaking of the franchise of the navigation company to take tolls, said: "The franchise is a vested right. The State has power to grant it. It may retake it, as it may take other private property for public uses, upon the payment of just compensation. A like though a superior power exists in the National Government. It may take it for public purposes, and taken it even
62 against the will of the State, but it can no more take the franchise which the State has given than it can any private property belonging to an individual." This is the last expression of the Supreme Court on this question, and it must conclude this discussion.

The Supreme Court is the final arbiter upon all the questions that have been considered in this case. Its decisions are binding upon this court, and whenever that court has decided a question that is afterwards presented here it is the primary duty of this court to conform to that decision. Unless the opinions of the Supreme Court that have been cited have been misread and their purport has been misconceived, they have decided every question that has been considered here and left this court no power or duty but to follow those decisions. Unless the decisions of the Supreme Court from the Dartmouth College case, in 1819, to the case of the Navigation Company, in 1892, are to be disregarded, the franchise to consolidate with another railroad corporation was a vested right of this defendant from the time of the acceptance of its grant, and any law of a State which impaired that right was ineffectual, unless the power so to do was reserved by the legislature before or at the time of the grant. The legislature of Minnesota not only failed to reserve any such right, but in effect it contracted that the State would not impair any of the vested rights of the corporation by any amendment of the charter. If chapter 29 of the Laws of 1874 and section 3 of chapter 94 of the Laws of 1881 are to be construed to be amendments of this charter they restrict and impair the right of this defendant to consolidate with any other railroad company, and to that extent they are ineffective.

A single question remains. It is whether or not chapter 29 of the Laws of 1874 and section 3 of chapter 94 of the Laws of 1881 should be construed to be amendments of the charter of the defendant; but

it is unnecessary to determine that question in order to decide this preliminary motion. If they should be considered to be
63 amendments of that charter they are ineffective for the reasons that have been stated, and if they should not be deemed to be amendments of that charter they leave it unaffected and the right to consolidate unrestricted. In either event the agreement assailed in this case is not illegal on account of these statutes. For this reason this question will not now be considered, and the motion for the preliminary injunction will be denied.

(Endorsed:) Opinion of Judge Sanborn on motion for preliminary injunction. Filed Sept. 14, 1895. Oscar B. Hillis, clerk.

64 And thereafter, on the 14th day of September, 1895, the following order of court overruling and denying motion for an injunction was entered of record in said cause, viz:

65 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1895.

SATURDAY MORNING, *September* 14*th*, 1895.

Court opened pursuant to adjournment.

Present: Hon. Walter H. Sanborn, U. S. circuit judge; Hon. E. C. Stringer, U. S. district attorney; Hon. R. T. O'Connor, United States marshal; Oscar B. Hillis, clerk, by Louise B. Trott, deputy.

THOMAS W. PEARSALL
vs.
GREAT NORTHERN RAILWAY COMPANY. } Eq. C. No. 680.

Complainant's motion for a preliminary injunction, as prayed for in his bill, having been herctofore argued by the solicitors for the respective parties, duly submitted, and by the court taken under advisement:

Now, after due consideration thereof and being fully advised concerning the same, it is by the court ordered that the said motion be, and the same hereby is, overruled and denied.

Ordered that this court do now adjourn until the 25th day of Sept., A. D. 1895, at 10 o'clock a. m.

A true record.

Attest: OSCAR B. HILLIS, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

66 And thereafter, on the 25th day of September, 1895, the following order of court amending complaint was entered of record in said cause in words and figures following, viz:

67 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1895.

WEDNESDAY MORNING, *September 25th*, 1895.

Court opened pursuant to adjournment.

Present: Hon. Walter H. Sanborn, U. S. circuit judge; Hon. R. T. O'Connor, U. S. marshal; Oscar B. Hillis, clerk, by Louise B. Trott, deputy.

THOMAS W. PEARSALL
vs.
GREAT NORTHERN RAILWAY COMPANY. } C. Eq. No. 680.

Henry J. Horn, Esq., appeared for the complainant and moves the court for leave to withdraw the replication of the complainant herein and for leave to amend the bill by adding at the end of the 10th paragraph as a part thereof the following allegation with the same effect as if the said bill has been amended before the answer had been made, viz: "Complainant further alleges that the defendant and the said Northern Pacific Railroad Company are respectively common carriers and competing lines."

Mr. Frank B. Kellogg and Mr. Edward P. Sanborn appear for the defendant, The Great Northern Railway Company, and, there being no objection, it is—

Ordered that said motion be, and the same hereby is, granted.

68 And thereafter, on the same day, the following notice of application for a decree was filed of record in said cause, viz:

69 United States Circuit Court for the District of Minnesota, Third Division. In Equity.

THOMAS W. PEARSALL, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, Defendant. }

Please take notice that the above cause has been set down for hearing upon the bill and answer on the 25th day of September, A. D. 1895, at 10 o'clock a. m., in the usual place of holding United States circuit court, at the United States custom-house building in the city of St. Paul, Minnesota, and that upon said hearing the complainant will apply for a decree in his favor.

Dated September 16th, 1895.

H. J. HORN,
A. H. YOUNG,
Solicitors & Counsel for the Complainant.

To M. D. Grover, Esq., Messrs. Davis, Kellogg & Severance, Jno. B. & E. P. Sanborn, solicitors and counsel for defendant.

Due service by copy of the above notice is hereby admitted by copy at St. Paul, Minnesota, this 16th day of September, 1895.

M. D. GROVER,
DAVIS, KELLOGG & SEVERANCE &
J. B. & E. P. SANBORN,
Solicitors for Defendant.

(Endorsed:) Notice of application for decree. Filed Sept. 25th, 1895. Oscar B. Hillis, clerk.

70 And thereafter, to wit, on the 25th day of September, 1895, the following decree, dismissing bill with costs, and order allowing appeal to the Supreme Court of the United States was entered of record in said cause in words and figures following, viz:

71 United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1895.

SEPTEMBER 25, 1895.

Present, &c.

THOMAS W. PEARSALL
vs.
GREAT NORTHERN RAILWAY COMPANY. } C. Eq. No. 680.

This day come Henry J. Horn, Esq., solicitor for the complainant, and Frank B. Kellogg and E. P. Sanborn, Esquires, solicitors for the defendant, thereupon submit the case to the court upon the bill and answer for final hearing, and thereupon this cause came on to be heard on the bill and answer at this term and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed, for the reasons stated in the opinion of this court upon the motion for a preliminary injunction in this suit, that the said bill of complaint be, and the same hereby is, dismissed with costs.

Thereupon, upon the rendition of the foregoing decree and in open court, Henry J. Horn, solicitor for the complainant, prays an appeal from said decree to the Supreme Court of the United States, and it is ordered that said appeal from this decree be, and the same hereby is, allowed, and the amount of the bond or security for costs to be given be, and the same hereby is, fixed at the sum of two hundred and fifty dollars ($250.00).

72 And thereafter and on the same day, to wit, the 25th day of September, 1895, the following stipulation as to costs was filed of record in said *costs*, viz:

73 United States Circuit Court, District of Minnesota.

THOMAS W. PEARSALL, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, Defendant.

It is hereby stipulated and agreed that the defendant's costs herein, including the solicitors' fee, be taxed at $27.00 forthwith and without further notice.

Dated Sept. 25th, 1895.

H. J. HORN & A. H. YOUNG,
Complainant's Solicitors.

M. D. GROVER,
DAVIS, KELLOGG & SEVERANCE,
JOHN B. & E. P. SANBORN,
Defendant's Solicitors.

(Endorsed:) Stipulation that costs be taxed at $27.00. Filed Sept. 25th, 1895. Oscar B. Hillis, clerk.

74 And thereafter and on the same day, to wit, the 25th day of September, the following bond for costs was filed of record in said cause, to wit:

75 In the Circuit Court of the United States for the District of Minnesota, Third Division. In Equity.

THOMAS W. PEARSALL, Complainant,
vs.
GREAT NORTHERN RAILWAY COMPANY, Defendant.

Know all men by these presents that we, Henry J. Horn and A. E. Horn, both of the city of St. Paul and State of Minnesota, are held and firmly bound unto the Great Northern Railway Company in the sum of two hundred and fifty dollars ($250), to be paid to the said Great Northern Railway Company; for the payment of which, well and truly to be made, we do bind ourselves, our executors and administrators, firmly by these presents.

Sealed with our seals and dated this 25th day of September, A. D. 1895.

Whereas the above-named Thomas W. Pearsall, plaintiff and complainant in a certain cause or action against The Great Northern Railway Company, defendant, in equity, in the United States circuit court for the district of Minnesota, third division, has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the said cause or suit by said circuit cou-t of the United States for the district of Minnesota, third division:

Now, therefore, the condition of this obligation is such that is the said Thomas W. Pearsall shall prosecute said appeal to effect and if he fail to make his plea good shall pay and answer all costs, then this obligation shall be void; otherwise the same shall be in full force and virtue.

76 Witness our hands and seals the day and year first herein stated.

HENRY J. HORN. [SEAL.]
ALEXANDER E. HORN. [SEAL.]

Signed, sealed, executed, and delivered in our presence:
G. M. NELSON.
ALEX. R. SPEEL.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 25th day of September, A. D. 1895, personally appeared before me Henry J. Horn and A. E. Horn, to me well known to be the same persons described in and who executed the foregoing bond, and they severally acknowledged the same to be their free act and deed.

G. M. NELSON,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minnesota.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Henry J. Horn and Alexander E. Horn came before me personally, and, being by me first duly sworn, doth say each for himself that he is the surety above named; that he is a resident and freeholder of and in the State of Minnesota and worth the amount of two hundred and fifty dollars specified in the foregoing bond above his debts and liabilities and exclusive of his property which is exempt from execution.

HENRY J. HORN.
ALEXANDER E. HORN.

Subscribed and sworn to before me this 25th day of September, A. D. 1895.

G. M. NELSON,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minnesota.*

77 (Endorsed:) Security on appeal. The within bond and surety is approved this 25th day of September, A. D. 1895. Walter H. Sanborn, judge of circuit court. Filed September 25th, 1895. Oscar B. Hillis, clerk.

78 In the Circuit Court of the United States for the District of Minnesota, Third Division. In Equity.

THOMAS W. PEARSALL, Plaintiff,
vs.
THE GREAT NORTHERN RAILWAY COMPANY, Defendant. }

It is hereby stipulated that the annexed copies of the several acts of the legislature of the Territory and State of Minnesota and the

acts and resolutions of Congress referred to in the bill and answer may be attached to and form a part of the return to the appeal in this cause and may be printed therewith.

Dated September 25th, 1895.

HENRY J. HOWE,
Solicitor & Attorney for Plaintiff.
M. D. GROVER.
DAVIS, KELLOGG & SEVERANCE,
E. T. SANBORN,
Solicitors & Attorneys for Defendant.

79 *Acts of the Legislature of the State of Minnesota Relating to the Minneapolis and Saint Cloud Railroad Company.*

An act to incorporate the Minneapolis and Saint Cloud Railroad Company.

Be it enacted by the Legislative Assembly of the Territory of Minnesota:

SECTION 1. John H. Stevens, William Hanson, Franklin Steele, Alfred E. Ames, R. P. Russell, J. P. Wilson, J. L. Crocker, George F. Brott, J. M. Winslow, A. M. Fridley, John Banfil, and all such other persons as shall hereafter become stockholders in the company hereby incorporated, shall be and are hereby made a body politic and corporate, by the name and style of the "Minneapolis and Saint Cloud Railroad Company," and by and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against in law and equity, in any and all courts and places whatsoever, as fully as natural persons; and the said corporation may make and use a common seal, and alter and renew the same at pleasure, and by their corporate name and style shall be capable of contracting and being contracted with, and of acquiring by purchase, gift, grant, devise, or otherwise, and of holding and conveying all such estate and property, real and personal, as may be necessary or convenient to carry into effect the object and purposes of this act and of the said corporation.

SEC. 2. The said corporation is hereby authorized and empowered, and it is hereby declared to be the object and purposes thereof, to survey, locate, construct, complete, maintain, use, and operate,
80 and at their pleasure alter the line thereof, a railroad with one or more tracks or lines of rails, from a point to be selected by this company, in Minneapolis, in the county of Hennepin, in the Territory of Minnesota, by the most feasible and practicable route to Saint Cloud, in the county of Stearns, on the Mississippi river, and also a main line of road (by way of Mille Lac, since amended) to a point at or near the mouth of the St. Louis river, together with all necessary and proper stations, depots, turnouts, engines, cars, and other appurtenances and furniture of a railroad. (Enlarged by section 2 of the next act.)

SEC. 3. The capital stock of the corporation hereby created, shall be two millions of dollars, and shall be divided into shares of one

hundred dollars each, which shall be deemed personal property, and shall be transferable in such manner as the corporation by its regulation or by-laws shall prescribe, but no share of said stock shall be transferred while there shall be any instalments assessed thereon unpaid; and the directors of said corporation may, with the consent of the holders of a majority of the stock thereof, increase the capital stock thereof to such sum as may be necessary or convenient to carry into effect all the rights and privileges hereby granted thereto, not exceeding thirty millions of dollars. The shares of any increase of stock, shall be the same, and transferable in the same manner, as the shares of the original stock.

SEC. 4. The said company is hereby authorized to borrow money to be expended in the construction and equipment of their said road and its appendages, and to issue bonds for the payment thereof in the usual form; such bonds not to exceed in the aggregate, at the period of the completion of said road, three-fourths of the whole amount actually expended on said road and its appendages aforesaid; and may make and execute in the corporate name of said company all necessary mortgages, writings, notes, bonds or other papers, for any liability that it may incur in the construction or equipment of said road.

SEC. 5. That said company is hereby authorized and empowered to construct their said railroad and its branches in sections as fast as they may obtain the means for so doing; and the franchise of the portions so completed and put in operation, shall vest in said company the same as though the whole was completed.

81 SEC. 6. Said company is hereby authorized and empowered to connect its road by branches with the road of any railroad company or companies in the Territory or future State of Minnesota, that are now chartered or may hereafter be chartered, or to become part owner or lessee of any railroad in said Territory; and any railroad company in said Territory of Minnesota, duly organized, or which may hereafter be organized, under the laws of said Territory or future State of Minnesota, may connect its road with the road of said company, and may in like manner with the consent of said company become part owner or lessee of the road of said company, or any of its branches, or any portion thereof, situated in this Territory; and the said company are hereby authorized and empowered to run a branch of said road from Minneapolis, by way of West Saint Paul, to some point to be selected by said company on the Iowa State line.

SEC. 7. The said corporation shall have the right of way upon, and may appropriate to its own use and control, for the purpose of the said railroad and its appurtenances, land not exceeding two hundred feet in width throughout its entire length, and may, by its engineers, agents and contractors, enter upon and take possession of, and use all and singular, any lands, streams, timber, and materials of any and every kind, for the purpose of making the survey and location of said railroad; and of all stations, depots, turnouts, and other things necessary, proper, or convenient for the

same, and the full use and protection thereof, and of all its appendages and appurtenances.

SEC. 8. The said corporation may take and hold, for the said purposes or any of them, such additional lands as may be requisite or convenient therefor; but unless such lands taken by said corporation for any of said purposes shall be purchased of, or voluntarily given by, the owner or owners thereof, full and proper compensation therefor shall be made by said corporation to the owner or owners thereof, which compensation shall be ascertained and determined in the manner following: The said party or parties interested may present to a court, in the county in which the lands or real estate proposed to be taken shall be situate, having jurisdiction competent to entertain, adjudicate, and determine questions of title to real estate, a petition signed by him or them, describ-
82 ing with reasonable certainty and accuracy, by map, plat, survey, or otherwise, the lands or real estate so proposed or required to be taken, and setting forth the name of each and every owner, incumbrancer, and other persons interested in the same or any part thereof, so far as the same can be ascertained by the legal records affecting the same, and by view of the premises, or other inquiry touching the occupation thereof, and praying the appointing of three competent, disinterested persons, who shall be freeholders in said county, as commissioners to ascertain and determine the compensation to be made to the said owner or owners respectively, and to all tenants, incumbrancers, and others interested for the taking or injuriously affecting such land or real estate. A copy of such petition, with a notice of the time and place, when and where, the same will be presented to the court, shall be served on each and every person named therein as owner, incumbrancer, tenant, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering such copy of the petition and notice to each of the persons so named therein, if a resident of this Territory, or, in case of the absence of such person, by leaving such copy of the petition and notice at his or her usual place of abode, with some person of sufficient age and understanding to comprehend the object thereof, which shall be communicated to such person, with a request to deliver the same to the individual for whom it is thus left at the earliest opportunity. In case there shall be any persons named in such petition who are not residents of this Territory, and upon whom service cannot be made in the manner above prescribed, a notice stating briefly the objects of the petition, a description of the lands proposed to be taken, and the time and place of the presenting the petition to the court, and directed to such person or persons, shall be published in the newspaper published nea[illegible]st the location of such lands, and in a newspaper published at the seat of government of the Territory or State in which the lands shall be situate, once in each week for six consecutive weeks previous to the time designated for presenting such petition. The court to whom such petition shall be presented, shall not make any order for the appointment of commis-

sioners to ascertain and determine the compensation to be
83 paid to any owner or person who shall not appear in person, or by attorney or counsel, except upon proof by affidavit, and to the satisfaction of the court, of the service of the petition and notice in the manner hereinbefore prescribed, but may do so upon the appearance of the party or parties, or upon such proof of service in the absence of a party or parties. The court may, upon the application of the said corporation, or of any owner or party interested, for reasonable causes adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected thereby. When the court shall have proof satisfactory that all parties interested in any parcel of land have been duly served with the petition and notice in the manner herein prescribed, and of the nature and extent of the interest or estate of each and every party in the same, the court may make an order, to be recorded in the minutes thereof, appointing three disinterested, competent persons commissioners to ascertain and determine the amount to be paid by the said corporation to each of such persons, as compensation for his interest or estate in such parcel or parcels of land, and specifying the time and place of the first meeting of such commissioners. Said corporation shall without delay procure and deliver to each of such commissioners a copy of such order. Before the said commissioners shall enter upon the discharge of their duties, they shall respectively take and subscribe an oath that they will faithfully and impartially, and without fear, favor, reward, or the hope or promise of reward, discharge their duties as commissioners to ascertain and determine the compensation to be paid by the Minneapolis and Saint Cloud Railroad Company (here insert the names of the persons whose property is to be appraised) for lands or interest in lands to be taken for the use of said company. Such oath may be taken before any officer authorized by law to administer oaths. Whenever the place of any commissioner shall become vacant, the court may, upon such notice to the parties as he may prescribe, and by like order, supply the place by the appointment of another person as such commissioner, who shall be in like manner served with a copy of the order appointing him, and take the like oath. The commissioners shall meet at the
time and place specified in the order appointing them, and in
84 the order supplying any vacancy in such commission. When met and all present, (they) may proceed to the hearing of the proofs and allegations of the parties present, or reasonably notified by the company to be present, and authorized to administer oaths to witnesses before them; and before making any report they shall, if requested by the parties interested, or by either of their number, view the premises for which compensation is to be made, and the amount of which they are to determine. The commissioners may, as the exigency of any case, or the convenience of the parties or themselves may require, adjourn from time to time and to such places as may, in their judgment, be most conducive to the purposes of their investigations. No proceedings shall be had by the said commissioners unless all of them be present, except to adjourn, but any and every question submitted to them, may be decided by a ma-

jority, and shall be valid. The said commissioners shall keep minutes in writing of all their proceedings, in which they shall enter the time and place of their meetings and adjournments, the names of parties appearing before them in person or by attorney, the substance of the testimony of witnesses sworn and examined before them, and all disputed questions which shall be submitted to them, and their decisions thereon. They shall make and sign a report, which shall contain a description by metes and bounds, survey, map, or plat of each separate parcel of land proposed to be taken by the said company for its use, and the compensation for which they shall ascertain and determine, and the amount (if anything) to be paid by said company to each person whose interests are to affected thereby. They shall, as soon as their report shall be made, attach thereto their minutes and oaths of office, and file the same in the office of the clerk of the court appointing said commissioners, and notify the parties interested in such report that the same is made and filed. In case the said company, or any person interested in such report, shall deem the same unjust in any manner affecting the amount of the compensation to be paid, the company or such party may appeal therefrom at any time within twenty days after the service of notice of filing of said report. The party appealing shall file a notice of such appeal with the clerk of the court with whom the report shall have been filed, stating the grounds of the appeal, and serve a
85 copy thereof on the opposite party, within the time above prescribed for taking appeal, and by giving a bond in such penalty as the judge of the same court shall prescribe, conditioned to prosecute the appeal without unnecessary delay, to abide the order of the court may make on such appeal, and pay the costs of appeal if he shall fail to sustain the grounds of error or injustice prescribed in his notice of appeal. Upon the filing of the notice and bond for appeal, with proof by affidavit of the service of such appeal as above prescribed, all further proceedings on the report shall be stayed until the further order of the court, and the cause upon such appeal shall be entered, proceeded in, and determined in the same manner as cases on appeal from courts of justices of the peace; and in case the appeal shall involve the determination of any question of fact, the same shall be tried by a jury, unless the jury shall be waived by both parties. The report of the commissioners shall be final and conclusive unless appealed from in the manner above prescribed. Whenever the company shall take an appeal from any report of commissioners, such appeal shall not stay the work on the road or other structure on the premises or lands involved in the appeal, provided the company shall deposit in court the amount awarded or assessed by the report, or part or portion of the report, appealed from, to abide the order to be made by the court on the appeal. An appeal from any report, or part or portion of a report, of commissioners by or on the part of any person interested in any parcel of land or real estate proposed to be taken by the company, shall stay all work on the road or other structure on the premises in question, unless the company shall deposit in the court the

amount of money claimed by such appellant before the commissioners, to abide the order of the court on the said appeal. Whenever any report or part of report of commissioners shall have become final, and whenever any appeal from such a report shall have finally determined, the said corporation shall, upon the payment to each party interested the sum thereby determined to be due to him or her as a compensation for property taken, or deposit the same in the court for his or her use, become invested and seized of the title to the lands or real estate for which such payment or deposit shall have been made, and entitled to the full, free, and perfect
86 use and occupation of the same for the purposes aforesaid, which are, for all the objects of this act, hereby declared to be public purposes. The said commissioners shall be entitled to receive three dollars per day for their services; and their compensation, and all the fees of officers previous to and including the filing of the report of the commissioners, shall be paid by the said company. In case the title thus acquired to any lands by the said company for their use in the manner hereinbefore mentioned or otherwise, shall prove defective, they are hereby authorized to take the proceedings prescribed in this section to procure the title from the real owner.

SEC. 9. If the incorporators named in this act determine to accept this charter, they shall appoint three or more of their number, and such other person or persons as they may deem proper, as agents or commissioners, to receive the subscriptions to the stock of this corporation, and direct the times and places when and where the books for receiving such subscription will be opened; and such books may be opened by different agents or commissioners, at different places at the same time. Every person who shall subscribe for any stock of this corporation, shall, at the time of subscribing, pay to the agent or commissioners two per cent. on the amount of stock so subscribed.

SEC. 10. Whenever a hundred thousand dollars shall have been subscribed to the stock of this corporation, and two per cent. thereon paid as aforesaid, the stockholders shall meet in person or by proxy, at such time and place as the holders of a majority of the stock shall prescribe, and proceed to elect twelve directors from among the stockholders, each share of stock being entitled to one vote by the holder thereof, which shall be cast in person or by proxy. The directors shall elect one of their number to be president of the board of directors, and he shall preside at all the meetings thereof at which he shall be present. The directors shall also elect one of their number as vice-president, who shall preside in the absence of the president. The directors shall also elect some suitable and competent person to be secretary. They shall also elect a treasurer, who shall give such security for the safe keeping and payment of the moneys of the company as the directors shall require. At a meeting of the directors, seven shall form a quorum for the transaction of business; and all the affairs and business of the
87 said company shall be conducted by or under the directions of the board of directors, and they are authorized for the pur-

poses specified in this act to make and establish regulations and by-laws, and to do all things necessary to be done, and not inconsistent with the Constitution and laws of the United States, or the laws of this Territory, or this act. The directors first elected shall by lot divide into three classes. The first class shall hold their offices one year, and until their successors shall be elected and enter upon their duties; the second class shall hold their offices two years, until their successors be elected and enter upon their duties; and the third class shall hold their offices three years and until their successors are elected and enter upon their duties: and thereafter there shall annually be elected, in the manner hereinbefore specified, four directors of the said corporation, who shall hold their offices three years, and until their successors shall be elected and enter upon their duties. Vacancies which may from any cause occur in said board of directors, may be filled by appointment by the majority of the directors in office; and such appointment shall continue until the next annual election of directors, when all vacancies shall be filled by election. The annual elections shall be held at the office of the secretary of said company, and the secretary and two disinterested persons, to be appointed by the board of directors, shall be the inspectors of elections, and shall canvass the votes, and make and sign a certificate of the result, and the secretary shall immediately notify the persons elected of their election. (Added to by section 5 of the act of February 28, 1865.)

SEC. 11. The board of directors may, at such times as they may deem necessary or proper, assess upon the stock subscribed an instalment of not less than five nor more than twenty per cent., and require payment of such instalment within a reasonable time, not less than thirty days from notice thereof, under the penalty of a forfeiture of the stock upon which the assessment was made.

SEC. 12. The said corporation shall locate at least thirty miles of said road between Minneapolis and Saint Cloud, (by way of Manhattan,) and commence work thereon within two years from the time this act shall take effect, and shall complete and equip at least one track from Minneapolis and Saint Cloud, with suitable and safe switches and turnouts, within seven years from the same time; and

88 the said corporation are hereby authorized and empowered to connect with any railroad running in the same direction with this road, and where there may be any portion of another road which may be used by this company. This company shall not be bound to build such portions of road so long as they may use the portions of any other road which may answer the same purpose.* (Amended by section 3 of the act of February 28, 1865.)

SEC. 13. For the purpose of constructing and using said railroad, the said corporation is authorized to construct their said railroad and the necessary bridges across and over public highways and navigable streams: Provided, that it be so done as not to obstruct

*Under this section the time allowed for construction elapsed, but without forfeiture. This original charter became essentially confirmed by subsequent enactments, 1864, etc.

the highways, or to materially obstruct or impede the navigation of any navigable stream. And the said corporation is hereby authorized to contract with any other railroad company or corporation with whose road their road may come in contact, for the crossing or connection of such road, and for the joint use thereof.

SEC. 14. If any person shall wilfully obstruct or in any way injure, spoil, or destroy the railroad, or any part of the railroad, or anything affixed or appertenent thereto, and necessary or convenient for its free and safe use, or any of the materials for the construction thereof, or any building, fixture, or other structure, or carriage, engine, or car, erected or kept for the use thereof, such person shall be deemed guilty of a misdemeanor, and liable to be indicted and punished therefor in the territorial prison, for not more than ten years and for not less than five years, and shall also be liable to pay the company twice the amount of the damage occasioned thereby. And in case the death of any person shall be produced by or in consequence of any wilful or malicious obstruction or injury to the said railroad, or to any engine or car thereon, the person who shall so obstruct or injure the said railroad, or car or engine thereon, shall be deemed guilty of murder in the second degree.

SEC. 15. Every conductor, baggage master, or other agent or servant of the said company, and who shall be engaged in the ticket office, or on the cars on said railroad, shall wear upon his hat or cap a plain badge, which shall indicate his office or station; and no conductor or collector shall demand or be entitled to receive any fare or toll from any freighter or passenger, or exercise any
89 control or direction in his station, or be authorized or allowed to interfere with any passenger, baggage, or freight, without wearing such badge.

SEC. 16. Every locomotive engine on said railroad, shall be furnished with a good and sufficient alarm bell or whistle, and be fully sounded at least eighty rods distant from every highway crossing while the engine, either with or without a train of cars, shall be passing over said road; and for every violation of this section the said company shall forfeit and pay, to whomsoever shall prosecute for the same, the sum of one hundred dollars.

SEC. 17. This act is hereby declared to be a public act, and may be amended by any subsequent Legislative Assembly, in any manner not destroying or impairing the vested rights of said corporation.

SEC. 18. This act shall take effect immediately after its passage.

CHARLES GARDNER,
Speaker of the House of Representatives.
JOHN B. BRISBIN,
President of the Council.

Approved March 1, 1856.

W. A. GORMAN.

I hereby certify the foregoing to be a correct copy of the original bill on file in this office.

J. TRAVIS ROSSER,
Secretary of the Territory of Minnesota.

NOTE.—See important additions made by sections 6–12 inclusive, of the act of February 28, 1865, given hereinafter, and also by subsequent acts.

An act to amend an act entitled "An act to incorporate the Minneapolis and Saint Cloud Railroad Company," passed March first, eighteen hundred and fifty-six.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. (Repealed.)

SEC. 2. That the second section of said act, to which this is an amendment, shall be and read as follows: The said corporation is hereby authorized and empowered to survey, locate, construct, complete, maintain, use and operate a railroad from Minneapolis
90 to Saint Cloud, and from Saint Cloud to the navigable waters of Lake Superior, with all necessary and proper stations, depots, turnouts, engines, cars, and other appurtenances and furniture of a railroad. The said corporation are also authorized and empowered to survey, locate, build, and operate a branch railroad from Saint Cloud to some point on the Minnesota river, between township ranges twenty-five and thirty-one, west of the fifth principal meridian, with like privileges for stations, depots, turnouts, engines, cars, and the usual furniture of a first-class railroad.

SEC. 3. (Repealed.)

SEC. 4. And be it further enacted, That the said "Act to incorporate the Minneapolis and Saint Cloud Railroad Company" is hereby declared to be in full force and effect, except so far as the same is repealed or modified by this act.

Approved February 23, 1864.

An act granting swamp lands to aid the Minneapolis and Saint Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi railroad and the Winona and Saint Peter railroad or any other railroad in southern Minnesota.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That there be and are hereby granted to the Minneapolis and Saint Cloud Railroad Company, incorporated by and organized under an act of the legislature of the late Territory of Minnesota, approved March first, eighteen hundred and fifty-six, to aid said company in the construction of a branch railroad from Saint Cloud, to connect with the Lake Superior and Mississippi railroad (or any other road connecting with the waters of Lake Superior), at some point between Chengwatana and the head of said Lake Superior, to be determined by said company, all the swamp lands belonging to, or that may hereafter belong to, the State of Minnesota, which have not been otherwise appropriated, in the

sections designated by odd numbers, and lying within the several counties through or into which said branch road may run, not exceeding four sections per mile of said branch road, upon
91 the terms and conditions hereinafter specified. (Increased to ten sections by section 1 of the act of March 5, 1869.)

SEC. 2. That to aid said company in constructing a branch road from said Saint Cloud to connect with the Winona and Saint Peter railroad, or any other railroad running in southern Minnesota from east to west, and to strike the Minnesota river at Saint Peter or some point between St. Peter and the mouth of Redwood river, there be and are hereby granted to said company all the swamp lands belonging to, or that may hereafter belong to, said State in the sections designated by odd numbers, and lying within the counties through or into which said branch road may run, not exceeding four sections per mile of said branch road, upon the terms and conditions hereinafter specified. (Amended and confirmed by section 2 of the act of March 10, 1885.)

SEC. 3. And if upon the completion of either of said branch roads it shall be found that there shall not be an amount of odd-numbered sections of said swamp lands, within the counties through or into which said branch road may pass, equal to four full sections per mile of said branch roads, then the said company shall have the right to and may select from the swamp lands then belonging to said State, and within the several land districts through or into which said branch roads shall pass, other swamp lands designated by odd numbers equal to such deficiency; and the lands so selected by said company shall be certified and conveyed to said company by the governor of the State.

SEC. 4. And be it further enacted, That whenever and as often as either of said branch roads shall be continuously graded and ready for the ties throughout all of that portion thereof lying in any one or more of the counties through or into which the same may pass, it shall be the duty of the governor to execute, on behalf of the State, a deed of conveyance to said company of the swamp lands designated as aforesaid, and lying within the said county or counties, and to be selected by said company, equal to two sections per mile of the road so graded; and whenever and as often as either of said roads is so far completed through any one or more of the counties through which it may pass, as to be ready for the rolling stock, in the judgment of a competent engineer whom the governor
92 shall appoint to report thereon, it shall be the duty of the governor aforesaid to execute a deed of conveyance on behalf of the State to said company for two additional sections of said swamp lands in said county or counties for each mile of the road so finished. And whenever either of said branch roads shall be ready for the rolling stock throughout its entire length, it shall be the duty of the governor so to deed and convey to said company all the swamp lands designated as aforesaid, in the counties and land districts aforesaid, not exceeding four sections per mile of said branch road: Provided always, that this act shall not be construed to interfere with the vested rights previously acquired by any other com-

pany under the laws of this State or the United States, or with grants for schools or other purposes by Congress: Provided, that if said company shall not within five years construct and equip for business, with the cars running thereon, at least ten miles of said road, or either of its branches, and the residue within seven years from the passage of this act, then and in that case all the lands hereby granted, pertaining to the unbuilt portions of said road, or either of its branches, shall be forfeited to the State, except such as are by this act granted to said company for and upon the grading of its line or lines, or portions thereof, as herein provided, which last-mentioned lands shall revert to the State, unless the grading is done within the time hereinbefore mentioned for the completion of said road: And provided further, that this grant shall not prejudice or apply to any grant heretofore made to the Southern Minnesota Railroad Company: And provided always, that this act shall not be construed to interfere with the vested rights previously acquired by any other company, under any laws of this State or the United States, or with grants for schools, asylums, or other charitable purposes, made by Congress or the State legislature. (In part amended by section 2 of the act of March 5, 1869.)

SEC. 5. This act shall take effect and be in force from and after its passage. (Compare the act of March 10, 1885.)

Approved February 11, 1865.

93 An act to amend an act entitled "An act to incorporate the Minneapolis and Saint Cloud Railroad Company," approved March first, eighteen hundred and fifty-six, and to repeal certain portions of an act amending the charter of said company, passed February twenty-three, eighteen hundred and sixty-four.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That, whereas, the incorporators or persons named in the first section of the act of the legislature of the late Territory of Minnesota, entitled "An act to incorporate the Minneapolis and Saint Cloud Railroad Company, and approved March first, eighteen hundred and fifty-six," did, in the manner prescribed by said act, open books and receive subscription to the capital stock of said railroad company to an amount exceeding one hundred thousand dollars, upon which said stock so subscribed, to the amount or sum of two per cent. was actually paid in on or before the fifteenth day of March, eighteen hundred and fifty-seven; and, whereas, the said stockholders of said company have ever preserved and maintained the status given to them by their said several subscriptions and payments (no further assessments having been made on the said stock); and whereas, the holders of said stock have since organized said company by the election of a board of directors, and the other officers named in said act, in the manner therein pointed out, and have received additional subscriptions to the capital stock of said company, upon all of which two per cent. thereof has been actually paid into the treasury of said company, and said company is and ever has been desirous of availing themselves of all the franchises

granted by said act; and whereas, without the consent of said stockholders, or said company, the legislature of the State of Minnesota, by an act approved February twenty-three, eighteen hundred and sixty-four, and entitled "An act to amend an act entitled 'An act to incorporate the Minneapolis and Saint Cloud Railroad Company,' passed March first, eighteen hundred and fifty-six," did undertake to amend said first-mentioned act by inserting as corporators persons other than those named as corporators in said first-mentioned or original act, and other than the stockholders aforesaid;
94 and did also, in said amendatory act, in like manner, declare the said persons named therein, their assigns, survivors, and each of them, directors of said Minneapolis and Saint Cloud Railroad Company, or said corporation, for the term of one year from the passage of said amendatory act, and until one hundred thousand dollars stock should be subscribed and taken, when the holders of the stock so subscribed and taken were directed to choose a new directory, and to organize in the manner set forth in said original act, and also directing said persons therein named as such directors to choose all the other officers pertaining to said company, and empowering them to act as such until superseded by the directors chosen by the said stockholders, with a proviso, however, that the said persons named in said amendatory act should accept the charter as thus amended, by organizing for the purpose of executing and carrying the same into effect within six months from the passage thereof; and whereas, no stock has been ever subscribed to the capital stock of said railroad company under or pursuant to, or by virtue of, said amendatory act: Therefore, the first and third sections of said amendatory act are, and each of them is hereby, repealed, and all power or authority conferred or attempted to be conferred by said sections, or either of them, as against the incorporators, or persons named in the act thereby amended, or their associates, successors, or the organization in this act first named, is hereby revoked and annulled.

SEC. 2. The first section of the said act entitled "An act to incorporate the Minneapolis and Saint Cloud Railroad Company," passed March first, eighteen hundred and fifty-six, is hereby re-enacted the same as if it was here repeated at length; but the re-enactment thereof shall not in any manner injuriously affect the organization of said company first mentioned and referred to in this act, which said organization of said company is hereby in all respects legalized and confirmed, and declared to be the only legal representative of said company or corporation, and shall be recognized and treated as such in all courts or tribunals in this State or elsewhere; and the several directors and officers thereof, of said organization, and their successors, shall, whenever it shall or may become necessary or important to the interests of said company, be deemed the
95 successors of the persons named as directors in said amendatory act, and of each and every of the officers by said persons chosen under the provisions of said amendatory act: Provided, that no provision in this act or the act to which this act is an amendment, shall be construed as to interfere with the rights, privileges,

and franchises of any other land-grant railroad company in this State, existing at the time of the passage of this act, or of the act to which this is an amendment.

SEC. 3. That the twelfth section of the said act, entitled "An act to incorporate the Minneapolis and Saint Cloud Railroad Company," approved March first, eighteen hundred and fifty-six, is hereby re-enacted and amended so as to read as follows:

"SEC. 12. The said corporation is hereby authorized and empowered to connect with or adopt as its own, on such terms as may be agreed upon, between the parties or companies interested, any other railroad running in the same general direction with either of its main lines, or any branch road which said corporation is authorized to construct; and where there may be any portion of another railroad which may be so used by this company or corporation, it shall not be bound to build such portion of its own road or branches, so long as it may use the portion of any other road which may answer the same purpose."

SEC. 4. That section two of said charter or incorporating act, is hereby amended by striking out the words, "by way of Mille Lac," where they occur in said section.

SEC. 5. That section ten of said act, incorporating said company, is hereby amended by adding thereto the following:

The said board of directors shall have power at any meeting thereof, upon a written request of the holders of a majority of the stock, to increase or diminish the number of directors therein: Provided, however, that any change so made shall equally affect each class of directors herein provided for; and, in case the number is at any time reduced by virtue hereof, that the director or directors who shall go out of office, shall, unless otherwise agreed upon, be determined by lot by the directors belonging to either class,
96 if they shall be present, and if any one or more shall be absent, the presiding officer at said meeting may appoint some stockholder to act for such absent director. A majority of the directors of the board, after any such change, shall constitute a quorum for the transaction of business.

SEC. 6. The said Minneapolis and Saint Cloud Railroad Company shall also have power, in such manner as may be provided by resolution of its board of directors, to open books and receive subscriptions for stock pertaining solely to any one or more of its main lines, or branch roads, to any portion of either, in any amount necessary, and within the limits prescribed by its charter, and to provide for issuing certificates therefor; and whenever fifty thousand dollars of stock shall be so subscribed, the said stockholders may meet in person or by proxy at such time and place as said company shall have prescribed, or a majority of the holders of said stock may prescribe, and proceed to elect a sub-board of directors, not exceeding nine nor less than five in number, each share of said stock being entitled to one vote by the holder thereof, which shall be cast in person or by written proxy. The said sub-directors shall elect one of their number to be president of said sub-board of directors, and he shall preside at all the meetings thereof at which he

shall be present. The said directors shall also elect one of their number vice-president of said sub-board, who shall preside in the absence of the president. They shall also elect some suitable person to be secretary, and some suitable person to be treasurer, who shall give such security for the payment of the moneys intrusted to him as such officer, as the directors may from time to time require. A majority of said sub-directors shall form a quorum for the transaction of business. All the affairs of the said Minneapolis and Saint Cloud Railroad Company, pertaining to the line or branch for the construction of which said stock may be subscribed as aforesaid, shall be conducted by or under the direction of said sub-board of directors, and their successors in office, after the organization of said sub-board; and the said sub-board are hereby authorized, for the purposes in this section specified, to make and establish regulations and by-laws for their government, and the government of the line or branch to which their said stock may pertain as aforesaid, and shall have and may exercise all the powers over said line or branch, which the board
97 of directors of the said Minneapolis and Saint Cloud Railroad Company could have exercised over the same, had such sub-board of directors not been organized; and may do all things necessary to be done in the premises, not inconsistent with the laws of the State, or the charter of said company, or of this act. The number of sub-directors which shall constitute said sub-board after the first organization, their terms of office, the terms of office of each of the other officers herein provided for, and the manner of filling vacancies, shall be regulated by the stockholders; and their compensation by said sub-board. From and after the organization of such sub-board of directors, all the rights, privileges, franchises, and immunities granted by this or any other act of the legislature of the State or Territory to said Minneapolis and Saint Cloud Railroad Company, pertaining to the line or branch for which said sub-board of directors may be organized as aforesaid, and all right, title, interest, or claim of said company in and to all lands granted by any act of the legislature, and also pertaining to said line or branch, shall vest in said sub-board of directors for the use and benefit of the stockholders represented by said sub-board; but the said Minneapolis and Saint Cloud Railroad Company shall remain vested with all its other rights, powers, privileges, franchises, lands, and other property. The said sub-board may adopt by resolution any name which may designate the particular line or branch of road which they may propose to construct, and by and under such name the stockholders in said line or branch shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against in law or equity, in any and all courts or tribunals, as fully as natural persons; and may make and use a common seal, and alter and renew the same at pleasure, and by said name and style shall be capable of contracting and being contracted with, and of acquiring by purchase, gift, grant, or otherwise, and of holding and conveying all such estate and property, real and personal, as may be necessary or convenient to carry into effect the object and purposes of this section, and of the said Minneapolis and Saint Cloud

Railroad Company, so far as may concern said line or branch. And neither the stockholders mentioned in this section, nor the line, road, or branch which they may construct by virtue thereof, shall
98 be liable for any debt or liability contracted by said Minneapolis and Saint Cloud Railroad Company, after the organization of said sub-board of directors, or said subcompany; nor shall any of said stockholders be liable on stock subscribed or held by them, for debts or liabilities incurred after he shall have transferred the same; nor shall said Minneapolis and Saint Cloud Railroad Company be held to answer for any debt, demand, or liability incurred by or under the management of any sub-board of directors authorized by this section, except it should become a stockholder therein, and then only to the same extent as other stockholders in said line or branch.

SEC. 7. That any association of persons, corporation, or alleged corporation, to whom or to which any legislature of the State or late Territory of Minnesota have granted or shall grant any swamp lands, or the right, title, interest or claim of the State or said Territory in or to any lands donated by the Congress of the United States to the said Territory or State to aid in the construction of any railroad or line of railroad where or over a route which the said Minneapolis and Saint Cloud Railroad Company is authorized by its charter to build and construct either a main line or branch railroad, may and is hereby authorized, by deed authorized by a vote of the board of directors of such association, company or corporation, duly signed by the president, and sealed with the corporate seal thereof, if such association, company or corporation shall have adopted a seal, to surrender or to transfer to said Minneapolis and Saint Cloud Railroad Company, or to any branch or line thereof then having a separate organization, or sub-board of directors, as provided by this act, all the right, title, interest, and claim of such association, company, or corporation to any or all lands so granted and applicable, or pertaining to said line or branch road, or to any part thereof. And the said Minneapolis and Saint Cloud Railroad Company, and each line or branch thereof having a separate organization as in this act provided, are, and each of them is, hereby made capable of accepting and receiving such surrender or transfer of any such grant of lands, or the interest of the Territory or State therein, and of acquiring title to said lands upon the same terms and conditions as were or may be imposed on the original grantees, or association, company, or corporation so surrendering such
99 grant, lands, or interest, except that the time or times which may be limited by such original grant for grading or completing the road or line to which said grant may apply, shall commence to run from the date of the said surrender or transfer. And the governor of the State is hereby authorized and required after such surrender, when notification thereof is filed in the office of the secretary of state, to deal in all things concerning said grant with said Minneapolis and Saint Cloud Railroad Company, or the line or branch thereof, to whom or to which said surrender shall be made as aforesaid; and to that end he is hereby authorized and re-

quired, upon proper written demand, to convey from time to time directly to said company, or the separate line or branch thereof entitled thereto, all the lands embraced in said grant and surrender to which said company, line, or branch, may become entitled by virtue hereof, and of said original grant, the same as he may have been authorized to convey to said original grantee or grantees, had such surrender not been made.

SEC. 8. The said The Minneapolis and Saint Cloud Railroad Company, and each of its branches being organized as aforesaid, shall have power to consolidate the whole or any portion of its capital stock with the capital stock or any portion thereof of the road or branch road of any other railroad corporation or company having the same general direction or location, or to become merged therein, by way of substitution, upon such terms or conditions as the two companies may agree, by the consent of a majority of the stockholders of each company, and the two companies, when such consolidation has been made, shall control and manage, by the board of directors of both companies acting jointly, such consolidated road, until the first election of directors of said consolidating companies, when the stockholders of said companies shall choose, at such time and place as they shall agree upon, a board of directors, not to exceed eleven in number, who shall have power to adopt a name for such consolidated road, and by which they shall be known and recognized; to adopt a common seal; to sue and be sued; contract and be contracted with; and shall have and enjoy all and singular the rights, right of way, privileges, and immunities of said consolidating companies, or either of them, as to such consolidated line, before such consolidation, which said agreement of consolidation shall be in writing, signed by the president of said consolidating companies respectively, and a copy thereof filed in the office of the secretary of state.

SEC. 9. The said Minneapolis and Saint Cloud Railroad Company may consolidate any portion of its road and property, and each branch being organized as aforesaid may consolidate the whole or any portion of its branch road and property, with the franchises of any other railroad company or any portion thereof, upon such terms and conditions as said companies, or a majority of the directors thereof, with the consent of the holders of a majority of the stock, respectively, may agree; provided, that said consolidated road shall not be affected by *a* or subject to any liens, judgments, deed of trust, or mortgage, created upon or growing out of any subsequent agreements, liabilities, or transactions connected with any other portion of said Minneapolis and Saint Cloud railroad, or of the road or branch with which it may be so consolidated.

SEC. 10. The Minneapolis and Saint Cloud Railroad Company, and each of its branches organized as herein provided, shall have power to create and issue, in such manner and on such terms as it may deem expedient, one or more classes of preferred stock and special stock, and to make such agreements as it may deem proper with the respective holders thereof as to the dividends thereon, and the securities for such dividends, and to make such agreements as

it may deem proper, with the holders of any special or preferred stock, for the appropriation of the net earnings of any portion of the railroad which it may construct or otherwise acquire, to the payment of dividends on such stock as may be issued in respect thereto, which appropriation, as made by such agreement, shall be effectual to secure to the said and future holders of such stock the application of such net earnings as in the said agreement provided, against any future act of the company or branch, or any of its general liabilities. And the said company or branches may make such agreements as it may deem proper with the holders of any such special stock as to the administration of the portion of said railroad, and any land grant appertaining thereto to which said stock may pertain, and for the separate organization of the holders of such special stock for the purpose of that administration, and enabling
101 them, or directors chosen by them separately or in conjunction with the other directors, to exercise in respect to the portion of the road to which such special stock may pertain, all the powers of the company, subject to the provisions of such agreement when made and entered into.

SEC. 11. The Minneapolis and Saint Cloud Railroad Company, and each of its branches so organized, shall have power to provide, in any mortgage or deed of trust which it may issue, covering any portion of its road now built, or hereafter to be built, that the holders of the bonds, secured by such deeds of trust or mortgage, shall have the right to vote at any meetings held for the election of directors of said company or branch, or for any other purpose, and such voting power to be to such extent as may be provided for either in such deed of trust or mortgage or in the bonds issued by said company. And all meetings, both of directors or stockholders, of said company or branch, may be held either within or without the State of Minnesota, or any of the United States, in the city of London, England, or any foreign State or country, as shall be provided for by the by-laws of said company or branch; and all or any of the directors may be residents of the city of London, aforesaid, or of any foreign country.

SEC. 12. The Minneapolis and Saint Cloud Railroad Company, and each branch thereof having a separate organization as above provided for, may consolidate the whole or any portion of its main lines or branch railroad; and all the property, rights, powers, franchises, grants, and effects pertaining to such roads, with the rights, powers, franchises, grants, and effects of any other railroad company, either within or without this State, upon such terms and conditions as such company or branch organization, or a majority of the directors thereof, may respectively agree; and the railroad company in which such railroad shall become vested by such consolidation, shall thereafter hold and enjoy all rights, grants, and powers and franchises, in respect to such, which the company or branch possessed before the consolidation; but the said Minneapolis and Saint Cloud Railroad Company, or branch organization thereof, shall remain vested with all its other rights, powers, privileges, and franchises.

SEC. 13. This act shall take effect from and after its passage.
Approved February 28, 1865.

102 An act to amend an act entitled An act granting swamp lands to aid the Minneapolis and Saint Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi railroad and the Winona and St. Peter railroad or any other railroad in southern Minnesota.

Be it enacted by the legislature of the State of Minnesota:
That section one of the said act be amended so as to read as follows:

SECTION 1. That there be and there hereby are granted to the Minneapolis and Saint Cloud Railroad Company, incorporated by and organized under an act of the legislature of the late Territory of Minnesota, approved March first, one thousand eight hundred and fifty-six, to aid the said company in the construction of a branch railroad from St. Cloud to connect with the Lake Superior and Mississippi railroad (or any other road connecting with the waters of Lake Superior), at some point between Snake river and the head of Lake Superior, to be determined by the said company, an amount of swamp lands belonging to or that may hereafter belong to the State of Minnesota, not otherwise granted, equal to ten (10) full sections for each mile of said road; provided, that this grant of lands shall not prejudice or affect the rights of any other railroad company, any asylum, charitable institution, or school, to any lands heretofore granted. (Extended by section 1 of the act of March 7, 1881.)

SEC. 2. Whenever any ten consecutive miles of the said railroad shall be completed and ready for the rolling stock, it shall be the duty of the governor to execute on behalf of the State a deed of conveyance to the said company, the full quota of said lands for the portion of said road so completed; provided that, if the said company shall not construct and equip for business, with cars running thereon, at least ten miles of the said road, within three years from the first day of December, A. D. one thousand eight hundred and sixty-nine, and the residue within six years from the last date aforesaid, then and in that case all the lands hereby granted, pertaining to the unbuilt portion of the said road, shall be forfeited to the State. (No such forfeiture was ever declared.)

SEC. 3. This act shall take effect and be in force from and after its passage.
Approved March 5, 1869.

103 An act to amend the charter of the Minneapolis and Saint Cloud Railroad Company.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That the name of the Minneapolis and Saint Cloud Railroad Company, and that of any of its branches, or any division or portion of its roads, subject to the control of said company, may

be changed, by resolution of the board of directors of said company, to any other name or names; and, upon filing a duly authenticated copy of such resolution in the office of the secretary of state, the said company, or branch, division, or portion of said road, shall be known by the name or names respectively adopted and designated in such resolution; and the stockholders may, by resolution, increase their directors to any number not exceeding fifteen, or decrease the number to seven.

SEC. 2. The times limited for the grading and completing the respective portions of said road, is hereby extended for the period of four years.

SEC. 3. Whenever there shall be a vacancy in the board of directors, by resignation, or from any other cause, the vacancies shall be filled for the unexpired term by the president and secretary of said company.

SEC. 4. The said Minneapolis and Saint Cloud Railroad Company are hereby authorized to survey, construct, operate, and maintain, under the provisions and restrictions of their charter, a branch road from Saint Cloud up the Sauk valley to some point upon the Saint Paul and Pacific railroad, or to some point on the Red River of the North, by the way of Alexandria; and all the rights, franchises, privileges, and immunities heretofore granted to said company, upon the main line or any branch thereof, shall apply to said branch road, as fully, to all intents and purposes, as the rights and privileges heretofore granted to said company.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved March 6, 1869.

104 An act to amend the charter of the Minneapolis and St. Cloud Railroad Company.

SECTION 1. That in consideration of an annual payment of a per centum of the gross earnings of the Minneapolis and Saint Cloud railroad, as herein provided, the road, its appurtenances and appendages, and all other property, estate, and effects of the Minneapolis and Saint Cloud Railroad Company, which they have already acquired, or which they may hereafter acquire, purchase, hold, possess, enjoy, or use for, in, or about the construction, equipment, renewal, repair, maintaining, or operating its railroad, as also the stock and capital of said company, shall be and hereby are forever exempt from all assessment and taxation; and, in consideration of the grants made to, and privileges and franchises conferred upon, said company, and of the exemption contained in this section, the said company shall, during the first three years after thirty miles of said railroad shall be completed and in operation, on or before the first day of March of each and every year, pay into the treasury of the State one per cent. on the gross earnings of said railroad, the first payment to be made on the first day of March next after the said railroad shall be completed and in operation; and shall, during the seven years next remaining after the expiration of the three

years aforesaid, pay into the treasury of this State, on or before the first day of March of each and every year, two per cent. on the gross earnings of said railroad; and shall, from and after the expiration of ten years from the completion of thirty miles of said railroad, on or before the first day of March of each and every year, pay into the treasury of this State three per cent. of the gross earnings of said railroad. And the payment of such per centum annually, as aforesaid, shall be and is in full of all taxation and assessment whatever. And, for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by affidavits of the secretary and treasurer of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is hereby vested in the governor of this State, or any other person appointed by law, to examine, under oath, the officers and employés of said railroad, or other persons; and, if any person so examined by the governor or other authorized person, shall knowingly or willingly swear falsely concerning the matter aforesaid, every such person is declared to have committed perjury. And, for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of said company, and upon all the property, estate, and effects of said company whatever, real, personal, or mixed; and the lien hereby secured to the State, shall take and have precedence of all demands, decrees, and judgments against said company.

SEC. 2. The provisions of the foregoing section, are hereby extended to the said Minneapolis and Saint Cloud railroad and all its branches.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved March 2, 1870.

An act to extend the time for the construction and completion of a branch of the Minneapolis and Saint Cloud railroad.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That the time for the construction, completion, and equipment of that branch of the Minneapolis and Saint Cloud railroad from Saint Cloud, to connect with the Winona and Saint Peter railroad, or any other railroad running in southern Minnesota from east to west, and to strike the Minnesota river at Saint Peter, or some point between Saint Peter and the mouth of Redwood river, being the same branch road mentioned and referred to in section two of chapter three of the Special Laws of the year one thousand eight hundred and sixty-five, approved February eleventh, one thousand eight hundred and sixty-five, be and the same is hereby extended until the twenty-fifth day of December, one thousand eight hundred and eighty-five; and all the rights,

privileges, franchises, and immunities heretofore granted to the Minneapolis and Saint Cloud Railroad Company, are hereby continued and extended until the said twenty-fifth day of December, A. D. one thousand eight hundred and eighty-five; and if the said branch road shall, at the date last aforesaid, be fully completed and equipped, then, and in such case, the said rights, privileges, franchises, and immunities shall continue and be perpetual, as is in and by the original act of incorporation of said railway company, and the acts amendatory thereof, provided. (The time allowed hereunder, extended by the act of March 10, 1885, to December 25, 1887.)

SEC. 2. This act shall not take effect or be in force until a consolidation shall have been perfected in the manner prescribed in chapter four of the Special Laws of the year one thousand eight hundred and sixty-five, approved February twenty-eighth, one thousand eight hundred and sixty-five, of the capital stock representing and controlling the said branch road with the capital stock of the Mankato and Saint Cloud Railroad Company, now organized, or being organized, as a corporation under general statutes of this State, by articles of incorporation bearing date on the twentieth day of February, A. D. one thousand eight hundred and seventy-nine; and, from and after such consolidation, this act shall take effect and be in force.

Approved March 11, 1879.

107 An act to amend chapter fifty-six (56) of the Special Laws of A. D. one thousand eight hundred and sixty-nine, page two hundred and forty-nine (249), entitled "An act to amend an act entitled 'An act granting swamp lands to aid the Minneapolis and Saint Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi railroad and the Winona and Saint Peter railroad, or any other railroad in southern Minnesota.'"

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That section one (1) of chapter fifty-six (56) of the Special Laws of A. D. one thousand eight hundred and sixty-nine (1869), entitled "An act to amend an act entitled 'An act granting swamp lands to aid the Minneapolis and Saint Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi railroad and the Winona and Saint Peter railroad, or any other railroad in southern Minnesota,'" be and the same is hereby amended so as to allow and authorize said Minneapolis and Saint Cloud Railroad Company, under the provisions of its charter, and the amendments thereto, and of said act to which this is amendatory, to construct and operate its said branch in said section mentioned, so as to connect with any other railroad at Wyoming or any point north thereof.

SEC. 3. All acts and parts of acts inconsistent with this act, are hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage. (Compare the next act of March 10, 1885.)

Approved March 7th, 1881.

108 An act to amend an act entitled "An act granting swamp lands to aid the Minneapolis and Saint Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi railroad and the Winona and Saint Peter railroad, or any other railroad in southern Minnesota," approved February eleventh (11th), in the year of our Lord one thousand eight hundred and sixty-five (1865), as amended.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. Section two (2) of the act mentioned in the title hereof, being chapter three (3) of the Special Laws of one thousand eight hundred and sixty-five (1865), as amended by section one (1) of chapter sixty-five (65) of the Special Laws of one thousand eight hundred and eighty-one (1881), special session, is hereby amended so as to read as follows:

SEC. 2. That to aid said company, its successors or assigns, in constructing a branch road from Saint Cloud to the Southern Minnesota railroad, so called, to run by the way of the villages of Litchfield and Hutchinson and the city of Mankato and the city of Austin, there be and are hereby granted to said company, its successors or assigns, all the swamp lands belonging to, or that may hereafter belong to, the State of Minnesota, in the sections designated by odd numbers, and lying within the counties through or into which said branch road may run, not exceeding four (4) sections per mile of all that part of said branch railroad extending from Saint Cloud to the Southern Minnesota railroad, so called, upon the terms and conditions hereinafter specified in sections two (2) and three (3) of said chapter three (3) of said Special Laws of one thousand eight hundred and sixty-five (1865), as amended by section two (2) of chapter sixty-five (65) of the Special Laws of one thousand eight hundred and eighty-one (1881); and the said act is hereby further amended by inserting the words "its successors or assigns," after the word "company," wherever said word occurs in said section.

SEC. 3. That whenever the Saint Cloud, Mankato and Austin Railroad Company, its successors or assigns, shall before December twenty-fifth (25th), A. D. one thousand eight hundred and
109 eighty-seven (1887), to which time the swamp-land grant of said company is hereby extended, contract and equip for the transportation of freight and passengers, any one (1) or more sections of twenty (20) continuous miles of any part of that branch of the Minneapolis and Saint Cloud railroad, now known as the Saint Cloud, Mankato and Austin railroad, substantially upon the survey made via the villages of Litchfield and Hutchinson, by said company, then and in such case the governor shall certify and convey to said company, its successors or assigns, eighty (80) sections of the swamp lands heretofore granted for the construction of said road,

and so on as often as any further continuous sections of ten (10) miles as extensions thereof, shall be so completed and equipped, then the governor shall in like manner certify and convey to said company, its successors or assigns, a further quantity of forty (40) sections of the swamp lands granted as aforesaid, until the full completion of said road; provided, that this act shall not operate to affect any lands not heretofore granted.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved March 10, 1885.

110 An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's sound, on the Pacific coast, by the northern route.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Richard D. Rice, John A. Poore, Samuel P. Strickland, Samuel C. Fessenden, Charles P. Kimball, Augustus Haines, Edwin R. W. Wiggin, Anson P. Morrill, Samuel J. Anderson, of Maine; Willard Sears, I. S. Withington, Josiah Perham, James M. Becket, A. W. Banfield, Abiel Abbott, John Newell, Austin L. Rogers, Nathaniel Greene, Jr., Oliver Frost, John A. Bass, John O. Bresbrey, George Shiverick, Edward Tyler, Filander J. Forristall, Ivory H. Pope, of Massachusetts; George Opdyke, Fairley Holmes, John Huggins, Philander Reed, George Briggs, Chauncey Vibbard, John C. Fremont, of New York; Ephraim Marsh, John P. Jackson, Jr., of New Jersey; S. M. Felton, John Toy, O. J. Dickey, B. F. Archer, G. W. Cass, J. Edgar Thompson, John A. Green, of Pennsylvania; T. M. Allen, Moses W. Wilson, Horace Whittaker, Ira Bliss, of Connecticut; Joseph A. Gilmore, Onslow Stearns, E. P. Emerson, Frederick Smythe, William E. Chandler, of New Hampshire; Cyrus Aldrich, H. M. Rice, John McKusick, H. C. Waite, Stephen Miller, of Minnesota; E. A. Chapin, John Gregory Smith, George Merrill, of Vermont; James Y. Smith, William S. Slater, Isaac H. Southwick, Earl P. Mason, of Rhode Island; Seth Fuller, William Kellogg, U. S. Grant, William B. Ogden, William G. Greene, Leonard Sweat, Henry W. Blodgett, Porter Sheldon, of Illinois; J. M. Winchell, Elsworth Cheeseborough, James S. Emery, of Kansas; Richard F. Perkins, Richard Chenery, Samuel Brannan, George Rowland, Henry Platt, of California; William F. Mercer, James W. Brownley, of Virginia; John H. B. Latrobe, W. Prescott Smith, of Maryland; Greenbury Slack, A. J. Boreman, of West Virginia; Thomas E. Bramlette, Frank Shorin, of Kentucky; John Brough, John A. Bingham, Oran
111 Follett, John Gardner, S. S. L'Hommedieu, Harrison G. Blake; Philo Chamberlain, of Ohio; John A. Duncan, Samuel M. Harrington, of Delaware; Thomas A. Morris, Jesse L. Williams, of Indiana; Samuel L. Case, Henry L. Hall, David H. Jerome, Thomas D. Gilbert, C. A. Trowbridge, of Michigan; Edward H. Broadhead, Alexander Mitchell, Benjamin Ferguson, Levi Sterling, —— Marshall, of Wisconsin; J. C. Ainsworth, Orlando

Humason, H. W. Corbett, Henry Failling, of Oregon; J. B. S. Todd, M. K. Armstrong, J. Shaw Gregory, J. Le Berge, of Dakota Territory; John Mullen, Anson G. Henry, S. D. Smith, Charles Terry, of Washington Territory; H. W. Starr, Platt Smith, Nixon Denton, William Leighton, B. F. Allen, Reuben Noble, John L. Davies, of Iowa; Willard P. Hall, George R. Smith, H. Gayle King, John C. Sergeant, of Missouri; William H. Wallace, of Idaho Territory; J. H. Lathrop, Henry D. Cooke, H. E. Merrick, of the District of Columbia, and all such other persons who shall or may be associated with them, and their successors, are hereby created and erected into a body corporate and politic, in deed and in law, by the name, style and title of the "Northern Pacific Railroad Company," and by that name shall have perpetual succession, and shall be able to sue and to be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and have a common seal. And said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a contin-ous railroad and telegraph line, with the appurtenances, namely beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin, thence westerly by the most eligible railroad route, as shall be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude, to some point on Puget's sound, with a branch, via the valley of the Columbia river, to a point at or near Portland, in the State of Oregon, leaving the main trunk line at the most suitable place, not more than
112 three hundred miles from its western terminus; and is hereby vested with all the powers, privileges and immunities necessary to carry into effect, the purposes of this act as herein set forth. The capital stock of said company shall consist of one million shares of one hundred dollars each, which shall in all respects be deemed personal property, and shall be transferable in such manner as the by-laws of said corporation shall provide. The persons hereinbefore named are hereby appointed commissioners, and shall be called the board of commissioners of the "Northern Pacific Railroad Company" and fifteen shall constitute a quorum for the transaction of business. The first meeting of said board of commissioners shall be held at the Melodion hall, in the city of Boston, at such time as any five commissioners herein named from Massachusetts shall appoint, not more than three months after the passage of this act, notice of which shall be given by them to the other commissioners by publishing said notice in at least one daily newspaper in the cities of Boston, New York, Philadelphia, Cincinnati, Milwaukee and Chicago, once a week at least four weeks previous to the day of meeting. Said board shall organize by the choice from its number of a president, vice-president, secretary, and treasurer, and they shall require from said treasurer such bonds as may be deemed proper, and may from time to time increase the amount thereof as they may deem proper. The secretary shall be sworn to the faithful performance of his duties and such oath shall be entered upon the records of the company, signed by him and the oath verified thereon. The

president and secretary of said board shall in like manner call all other meetings, naming the time and place thereof. It shall be the duty of such board of commissioners to open books, or cause books to be opened, at such times and in such principal cities or other places in the United States, as they, or a quorum of them,
113 shall determine, within six months after the passage of this act, to receive subscriptions to the capital stock of said corporation, and a cash payment of ten per centum on all subscriptions and to receipt therefore. So soon as twenty thousand shares shall in good faith be subscribed for, and ten dollars per share actually paid into the treasury of the company, the said president and secretary of said board of commissioners shall appoint a time and place for the first meeting of the subscribers to the stock of said company, and shall give notice thereof in at least one newspaper in each State in which subscription books have been opened, at least fifteen days previous to the day of meeting, and such subscribers as shall attend the meeting so called, either in person or by lawful proxy, then and there shall elect by ballot thirteen directors for said corporation; and in such election each share of said capital stock shall entitle the owner thereof to one vote. The president and secretary of the board of commissioners, and, in case of their absence or inability, any two of the officers of said board shall act as inspectors of said election and shall certify, under their hands, the names of the directors elected at said meeting; and the said commissioners, treasurer and secretary shall then deliver over to said directors all the properties subscription books and other books in their possession, and thereupon the duties of said commissioners, and the officers previously appointed by them, shall cease and determine forever, and thereafter the stockholders shall constitute said body politic and corporate. Annual meetings of the stockholders of the said corporation for the choice of officers (when they are to be chosen) and for the transaction of business, shall be holden at such time and place and upon such notice as may be prescribed in the by-laws.

SEC. 2. And be it further enacted, That the right of way through the public lands be, and the same is hereby, granted to said "Northern Pacific Railroad Company," its successors and as-
114 signs, for the construction of a railroad and telegraph as proposed; and the right, power and authority is hereby given to said corporation to take from the public lands adjacent to the line of said road, material of earth, stone, timber and so forth for the construction thereof. Said way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass through the public domain, including all necessary ground for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables, and water stations; and the right of way shall be exempt from taxation within the Territories of the United States. The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the said Indians, the Indian titles to all lands falling under the operation of this act, and acquired in the donation to the (road) named in this bill.

SEC. 3. And be it further enacted, That there be and hereby is, granted to the "Northern Pacific Railroad Company," its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States and ten alternate sections of land per mile on each side of said railroad wherever it passes through any State and whenever on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied
115 by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections: Provided, that if said route shall be found upon the line of any other railroad route to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: Provided further, that the railroad company receiving the previous grant of land may assign their interest to said "Northern Pacific Railroad Company," or may consolidate, confederate, and associate with said company upon the terms named in the first section of this act: Provided, further, that all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections nearest to the line of said road may be selected as above provided: And provided further, that the word "mineral" when it occurs in this act, shall not be held to include iron or coal: And provided further, that no money shall be drawn from the Treasury of the United States to aid in the construction of the said "Northern Pacific railroad."

SEC. 4. And be it further enacted, That whenever said "Northern Pacific Railroad Company," shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report to the President of the United States and patents of lands,

as aforesaid shall be issued to said company, confirming to
116 said company the right and title to said lands, situated opposite to, and coterminous with, said completed section of said road; and, from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid and so on as fast as every twenty-five miles of said road is completed as aforesaid: Provided, that not more than ten sections of land per mile, as said road shall be completed, shall be conveyed to said company for all that part of said railroad lying east of the western boundary of the State of Minnesota, until the whole of said railroad shall be finished, and in good running order, as a first-class railroad from the place of beginning on Lake Superior to the western boundary of Minnesota: Provided also, that lands shall not be granted under the provisions of this act on account of any railroad or part thereof constructed at the date of the passage of this act.

SEC. 5. And be it further enacted, That said "Northern Pacific railroad" shall be constructed in a substantial and workmanlike manner, with all the necessary draws, culverts, bridges, viaducts, crossings, turnouts, stations, and watering places, and all other appurtenances, including furniture and rolling stock, equal in all respects to railroads of the first class, when prepared for business, with rails of the best quality, manufactured from American iron. And a uniform *guage* shall be established throughout the entire length of the road. And there shall be constructed a telegraph line, of the most substantial and approved description, to be operated along the entire line, provided, that the said company shall not charge the Government higher rates than they do individuals for like transportation and telegraphic service. And it shall be the duty of the Northern Pacific Railroad Company to permit any other
railroad which shall be authorized to be built by the United
117 States, or by the legislature of any Territory or State in which the same may be situated, to form running connections with it on fair and equitable terms.

SEC. 6. And be it further enacted, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale, or entry, or pre-emption before or after they are surveyed, except by said company as provided in this act, but the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, shall be and the same are hereby extended to all other lands on the line of said road, when surveyed, excepting those hereby granted to said company. And the reserved alternate sections shall

not be sold by the Government at a price less than two dollars and fifty cents per acre when offered for sale.

SEC. 7. And be it further enacted, That the said "Northern Pacific Railroad Company" be, and is hereby authorized and empowered to enter upon, purchase, take, and hold any lands or premises that may be necessary and proper for the construction and working of said road, not exceeding in width two hundred feet on each side of the line of its railroad, unless a greater width be required for the purpose of excavation or embankment; and also any lands or premises that may be necessary and proper for turnouts, standing places for cars, depots, station-houses, or any other structures required in the construction and working of said road. And the said company shall have the right to cut and remove trees and other material that might, by falling, encumber its road-bed, though standing or being more than two hundred feet from the line of said road. And in case the owner of such lands or premises
118 and the said company cannot agree as to the value of premises taken or to be taken, for the use of said road, the value thereof shall be determined by the appraisal of three disinterested commissioners, who may be appointed, upon application of either party, to any court of record in any of the Territories in which the lands or premises to be taken lie; and said commissioners, in their assessment of damages, shall appraise such premises at what would have been the value thereof if the road had not been built. And upon return unto court of such appraisment, and upon the payment into the same of the estimated value of the premises taken for the use and benefit of the owner thereof, said premises shall be deemed to be taken by the said company, which shall thereby acquire full title to the same for the purposes aforesaid. And either party feeling aggrieved at said appraisement may, within thirty days after the same has been returned into court, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said company to enter upon the premises taken, or to do any act necessary or proper in the construction of its road. And said party appealing shall give bonds, with sufficient surety or sureties, for the payment of any cost that may arise upon such appeal; and in case the party appealing does not obtain a verdict, increasing or diminishing, as the case may be, the award of the commissioners, such party shall pay the whole cost incurred by the appellee as well as his own, and the payment into court, for the use of the owner of said premises taken, of a sum equal to that finally awarded, shall be held to vest in said company the title of said land, and of the right to use and occupy the same for the construction, maintainance and operation of the road. And in case any of the lands to be taken as aforesaid, shall be held by any infant, *femme covert*, *non compos*, insane person, or person residing without the Territory within which the lands to be taken lie, or persons subjected to any legal disability, the court may appoint
119 a guardian for any party under any disqualification, to appear in proper person, who shall give bonds, with sufficient surety or sureties for the proper and faithful execution of his trust, and

who may represent in court the person disqualified, as aforesaid, from appearing, when the same proceedings shall be had in reference to the appraisement of the premises to be taken for the use of said company, and with the same effect as has already been described; and the title of the company to the lands taken by virtue of this act shall not be affected or impaired by reason of any failure by any guardian to discharge faithfully his trust. And in case any party shall have a right or claim to any land for a term of years, or any interest therein, in possession reversion, or remainder, the value of any such estate, less than a fee-simple, shall be estimated and determined in the manner hereinbefore set forth. And in any case it shall be necessary for the company to enter upon any lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purposes of said railroad, and may institute proceedings, in manner described, for the purpose of ascertaining the value thereof, and of acquiring title to, the same; but the judge of the court hearing said suit shall determine the kind of notice to be served on such owner or owners (and he may in *its* discretion appoint and agent or guardian to represent such owner or owners), in case of his or their incapacity or non-appearance. But in case no claimant shall appear within six years from the time of the opening of said road across said *any* land, all claims to damages against said company shall be barred.

SEC. 8. And be it further enacted, That each and every grant, right and privilege herein *are* so made and given to, and accepted by, said Northern Pacific Railroad Company, upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not
120 less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-six.

SEC. 9. And be it further enacted, That the United States make the several conditioned grants herein, and that the said Northern Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upward of one year, then, in such case, at any time hereafter, the United States by its Congress, may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

SEC. 10. And be it further enacted, That all people of the United States shall have the right to subscribe to the stock of the Northern Pacific Railroad Company until the whole capital named in this act of incorporation is taken up, by complying with the terms of subscription and no mortgage or construction bonds shall ever be issued by said company on said road, or mortgage or lien made in any way except by the consent of the Congress of the United States.

SEC. 11. And be it further enacted, That said Northern Pacific railroad, or any part thereof, shall be a post-route and a military

road, subject to the use of the United States, for postal, military, naval, and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation.

SEC. 12. And be it further enacted, That the acceptance of the terms, conditions, and impositions of this act by the said Northern Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterwards and shall be served on the President of the United States.

121 SEC. 13. And be it further enacted, That the directors of said company shall make an annual report of their proceedings and expenditures, verified by the affidavits of the president, and at least six of the directors; and they shall from time to time fix, determine and regulate the fares, tolls and charges to be received and paid for transportation of persons and property on said road, or any part thereof.

SEC. 14. And be it further enacted, That the directors chosen in pursuance of the first section of this act shall, so soon as may be after their election, elect from their own number a president and vice-president; and said board of directors shall, from time to time and so soon as may be after their election, choose a treasurer and a secretary, who shall hold their offices at the will and pleasure of the board of directors. The treasurer and secretary shall give such bonds with such security, as the said board from time to time may require. The secretary shall, before entering upon his duty, be sworn to the faithful discharge thereof, and said oath shall be made a matter of record upon the books of said corporation. No person shall be a director of said company unless he shall be a stockholder, and qualified to vote for directors at the election at which he shall be chosen.

SEC. 15. And be it further enacted, That the president, vice-president, and directors shall hold their offices for the period indicated in the by-laws of said company, not exceeding three years, rescectively and until others are chosen in their place and qualified. In case it shall so happen that an election of directiors shall not be made on any day appointed by the by-laws of said company, the corporation shall not for that excuse be deemed to be dissolved, but such election may be holden on any day which shall be appointed by the directors. The directors, of whom seven, including the president, shall be a quorum for the transaction of business, shall have full power to make and prescribe such by-laws, rules and regulations, as they shall deem *beedful* and proper, touching the
122 disposition and management of the stock, property, estate, and effects of the company the transfer of shares, the duties and conduct of their officers and servants touching the election and meeting of the directors, and all matters whatsoever which may appertain to the concerns of said company; and the said board of directors may have full power to fill any vacancy or vacancies that

may occur from any cause or causes from time to time in their said board. And the said board of directors shall have power to appoint such engineers, agents, and subordinates as may from time to time be necessary to carry into effect the object of the company, and to do all acts and things touching the location and construction of said road.

SEC. 16. And be it further enacted, That it shall be lawful for the directors of said company to require payment of the sum of ten per centum cash assessment upon all subscriptions received of all subscribers, and the balance thereof at such time and in such proportions and on such conditions as they shall deem to be necessary to complete the said road and telegraph line within the time in this act prescribed. Sixty days' previous notice shall be given of the payments required, and of the time and place of payment, by publishing a notice once a week in one daily newspaper in each of the cities of Boston, New York, Philadelphia, and Chicago, and in case any stockholder shall neglect or refuse to pay, in pursuance of such notice, the stock held by such person shall be forfeited absolutely to the use of the company and also any payment or payments that shall have been made on account thereof, subject to the condition that the board of directors may allow the redemption on such terms as they may prescribe.

SEC. 17. And be it further enacted, That the said company is authorized to accept to its own use any grant, donation, loan, power, franchise aid or assistance which may be granted to, or conferred upon, said company by the Congress of the United States, by the legislature of any State or by any corporation, person or
123 persons; and said corporation is authorized to hold and enjoy such grant, donation, loan, power, franchise, aid or assistance to its own use for the purpose aforesaid.

SEC. 18. And be it further enacted, That said Northern Pacific Railroad Company shall obtain the consent of the legislature of any State through which any portion of said railroad line may pass, previous to commencing the construction thereof; but said company may have the right to put on engineers and survey the route before obtaining the consent of the legislature.

SEC. 19. And be it further enacted, That unless said Northern Pacific Railroad Company shall obtain *bona fide* subscriptions to the stock of said company to the amount of two millions of dollars, with ten per centum paid within two years after the passage and approval of this act, it shall be null and void.

SEC. 20. And be it further enacted, That the better to accomplish the object of this act, namely; to promote the public interests and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may, at any time, having due regard for the rights of said Northern Pacific Railroad Company, add to, alter, amend or repeal this act.

Approved July 2, 1864.

A resolution extending the time for the completion of the Union Pacific railway, Eastern division.

SEC. 2. And be it further resolved, That the time for commencing and completing the Northern Pacific railroad, and all its several sections, is extended for the term of two years.

Approved May 7, 1866.

Joint resolution extending the time for the completion of the Northern Pacific railroad.

Be it resolved by the Senate and House of Representatives
124 of the United States of America in Congress assembled, That section eight of an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound, on the Pacific coast," is hereby so amended as to read as follows:

That each and every grant, right and privilege herein *are* so made and given to, and accepted by said Northern Pacific Railroad Company, upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from and after the second day of July, eighteen hundred and sixty-eight, and shall complete not less than one hundred miles per year after the second year thereafter, and shall construct, equip, furnish and complete the whole road by the fourth day of July, anno Domini, eighteen hundred and seventy-seven.

Approved July 1, 1868.

Joint resolution granting consent of Congress, provided for in section ten of the act incorporating the Northern Pacific Railroad Company, approved July second, eighteen hundred and sixty-four.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the Congress of the United States is hereby given to the Northern Pacific Railroad Company to issue its bonds, and to secure the same by mortgage upon its railroad and telegraph line, for the purpose of raising funds with which to construct said railroad and telegraph line between Lake Superior and Puget sound, and also upon its branch to a point at or near Portland, Oregon; and the term "Puget sound" as used here and in the act incorporating said company, is hereby construed to mean all the waters connected with the Straits of Juan de Fuca, within the territory of the United States.

Approved March 1, 1869.

Joint resolution granting right of way for the construction of a railroad from a point at or near Portland, Oregon, to a point west of the Cascade mountains, in Washington Territory.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the
125 Northern Pacific Railroad Company be, and hereby is, authorized to extend its branch line from a point at or near Portland,

Oregon, to some suitable point on Puget sound, to be determined by said company, and also to connect the same with its main line west of the Cascade mountains, in the Territory of Washington; said extension being subject to all the conditions and provisions, and said company in respect thereto being entitled to all the rights and privileges conferred by the act incorporating said company, and all acts additional to and amendatory thereof: Provided, that said company shall not be entitled to any subsidy in money, bonds or additional lands of the United States in respect to said extension of its branch line as aforesaid, except such lands as may be included in the right of way on the line of such extension as it may be located: And provided further, that at least twenty-five miles of said extension shall be constructed before the second of July, eighteen hundred and seventy-one, and forty miles per year thereafter until the whole of said extension shall be completed.

Approved April 10th, 1869.

A resolution authorizing the Northern Pacific Railroad Company to issue bonds for the construction of its road and to secure the same by mortgage, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Northern Pacific Railroad Company be, and hereby is authorized to issu- its bonds to aid in the construction and equipment of its road, and to secure the same by mortgage on its property, and rights of property of all kinds and descriptions, real, personal and mixed, including its franchise as a corporation; and as proof and notice of its legal execution and effectual delivery, said mortgage shall be filed and recorded in the office of the Secretary of the Interior; and also to locate and construct under the provisions and with the privileges, grants, duties, provided for in its act of incorporation, its main road to some point on Puget sound, via the valley of the Columbia river, with the right to
126 locate and construct its branch from some convenient point on its main trunk line across the Cascade mountains to Puget sound; and in the event of their not being in any State or Territory in which said main line or branch may be located, at the time of the final location thereof, the amount of lands per mile granted by Congress to said company, within the limits prescribed by its charter, then said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, in such State or Territory, within ten miles on each side of the said road beyond the limits prescribed in said charter, as will make up such deficiency, on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of subsequent to the passage of the act of July two, eighteen hundred and sixty-four, and that twenty-five miles of

said main line between its western terminus and the city of Portland, in the State of Oregon, shall be completed by the first day of January, anno Domini, eighteen hundred and seventy-two, and forty miles of the remaining portion thereof, each year thereafter, until the whole shall be completed between said points: Provided, that all lands hereby granted to said company, which shall not be sold or disposed of, or remain subject to the mortgage by this act authorized, at the expiration of five years after the completion of the entire road, shall be subject to settlement and pre-emption like all other lands, at a price to be paid to said company, not exceeding two dollars and fifty cents per acre; and if the mortgage hereby authorized shall at any time be enforced by foreclosure or other legal proceeding, or the mortgaged lands hereby granted, or any of them be sold by the trustees to whom such mortgage may be executed either at its
127 maturity, or for any failure or default of said company under the terms thereof, such lands shall be sold at public sale, at places within the States and Territories in which they shall be situate, after not less than sixty days' previous notice, in single sections or subdivisions thereof, to the highest and best bidder: Provided further, that in the construction of the said railroad American iron or steel shall be used, the same to be manufactured from American ores exclusively.

SEC. 2. And be it further resolved, That Congress may at any time alter or amend this joint resolution, having due regard to the rights of said company, and any other parties.

Approved May 31, 1870.

128 CHAPTER LXIX.

An act to aid in the construction of the "Northern Pacific railroad and telegraph line" from Lake Superior to Puget's sound.

Whereas, the Congress of the United States of America did, by an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's sound," on the Pacific coast by the northern route, approved the second day of July, eighteen hundred and sixty-four; create a body politic and corporate by the name, style and title of the "Northern Pacific Railroad Company;" and among other things, did authorize and empower said company to lay out, construct, furnish, maintain and enjoy a continuous railroad and telegraph line with the appurtenances, namely: Beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin, thence westerly, by the most eligible railroad route, to be determined by said company, within the territory of the United States, on a line north of forty-fifth degree of latitude, to some point on Puget's sound, with a branch, via the valley of the Columbia river, to a point at or near Portland, in the State of Oregon, leaving the main trunk line at the most suitable place not more than three hundred miles from its western terminus; and did also vest in said company all the rights, powers, privileges and immunities necessary to carry into effect the purposes of said act as therein set forth.

And whereas, the Congress of the United States did also, by said act, authorize said Northern Pacific Railroad Company to accept, hold and enjoy to its own use any grant, donation, loan, powers, franchise, aid or assistance, which might be granted to said company by the Congress of the United States, by the legislature of any State, or by any corporation, person or persons, for the purposes of said act.

And whereas, the said Northern Pacific Railroad Company
129 was also required by said act, to obtain the consent of the legislature of any State, through which any portion of said railroad line might pass, previous to commencing the construction thereof. Now therefore—

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. That the consent of the State be and the same is hereby given to the said Northern Pacific Railroad Company to survey lay out, locate, construct, furnish, maintain and enjoy a continuous railroad and telegraph line with the appurtenances, within its limits, on the line in said act of Congress authorized; and for the purposes aforesaid, in said act of Congress set forth, and in order to carry the same into full effect the said Northern Pacific Railroad Company, its successors and assigns are hereby vested with all the rights, powers, privileges and immunities within the limits of this State, which are by said act of Congress conferred upon them within the territories and jurisdiction of the United States, subject to the conditions in said act contained, and to the following proviso: Provided, that should the said company elect to make the eastern terminus of said road east of the eastern boundary of the State of Minnesota, then and in that case, they shall construct or cause to be constructed a line of railroad from the said main line to the navigable waters of Lake Superior, within the State of Minnesota, of the same guage as said main line, for which purpose the same powers, rights and privileges are hereby granted to said company, as they have or may have to construct said main line within the State of Minnesota. And provided further, that nothing in this act contained shall be construed as exempting the road-bed and other property of said company within the State from taxation.

Approved March 2, 1865.

130 CHAPTER 94.

An act to authorize any railroad company to lease, purchase, or in any way become owner of, or to control, any other railroad corporation, or to consolidate therewith.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. Any railroad corporation, either domestic or foreign, whether organized under a general law or by virtue of a special charter, may lease or purchase, or in any way become owner of or control, or hold the stock of, any other railroad corporation, when their respective railroads can be lawfully connected and operated together so as to constitute one continuous main line, with or without branches.

SEC. 2. Any railroad corporation, whether organized under a general law or by virtue of a special charter of the State or Territory of Minnesota, or under the laws of any other State or States or Territory, whose lines of railroad now or hereafter constructed within or without this State can be lawfully connected and operated together to constitute one continuous main line, with or without branches, so as to admit of the passage of trains over them without break or interruption, may consolidate their stock and franchises upon such terms as may be agreed upon, so as to become one corporation by any name by them selected.

Articles stating the terms of consolidation shall be approved by each corporation by a vote of the stockholders owning a majority of the stock, in person or by proxy, at either a regular annual meeting thereof, or at a special meeting called for that purpose, by notice of at least thirty days (30), stating the object of such meeting, to be addressed to each of such stockholders when their place of residence is known, and deposited in the post-office, and published for
131 at least three (3) successive weeks in one newspapers in at least one of the cities or towns in which each of said corporations has its principal business office, or by the consent in writing of a majority of such stockholders annexed to such articles; a copy of such articles of consolidation and of the record of such approval or of such consent accompanied by lists of the stockholders of said corporation, and the number of shares held by each, duly certified by their respective presidents and secretaries, with the respective corporate seals thereto affixed of said corporations, shall be filed for record in the office of the secretary of state of this State, and of the State or States or Territory by or under whose laws the said corporations parties to such articles of consolidation were created or exist, before any such consolidation shall have any validity or effect. Upon the filing for record of said copies the said corporation shall become merged in the new corporation provided for in said articles, to be known thereafter by the corporate name therein adopted, and shall, within this State, succeed to all the rights, powers, franchises, contracts, privileges, immunities, liabilities, obligations and duties, liabilities to or exemption from taxation, commutations, property, real, personal and mixed, and things in action, as fully in all respects as the same were possessed by such old corporation or corporations at the time of such consolidation under the laws of this State; and such new corporation shall hold and enjoy the same, and all and every part thereof, without impairment or change as fully in the same manner and to the same extent as if the said consolidation had not taken place. Provided, that all rights of creditors, and all the liens upon the property of either of said old corporations shall be preserved unimpaired, and all the debts, liabilities and duties of either of said consolidating corporations shall
132 thenceforth attach to said new corporation, and be enforcible to the same extent, and in the same manner as if such debts, liabilities and duties had been originally incurred by it. Provided, further, that all such corporations shall be subject to the laws of this

State and the jurisdiction of the courts of this State in the same manner and to the same extent as domestic corporations.

SEC. 3. No railroad corporation shall consolidate with, lease or purchase, or in any way become owner of, or control any other railroad corporation, or any stock franchises, rights of property thereof, which owns or controls a parallel or competing line.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved March 3, 1881.

133 CHAPTER XXIX.

An act relating to railroad corporations and common carriers.

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. No railroad corporation, or the lessees, purchasers, or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line; and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved March 9, 1874.

134 CHAPTER LXV.

An act in relation to the taxation and to facilitate the construction of the Northern Pacific railroad.

SECTION 1. Property of said road liable to assessment and taxation when exempt.

2. Authorized to acquire and hold property granted right of way.

3. Authorized to connect with or cross route of any other line.

4. Deemed a public act—when to take effect—to file notice of acceptance with the governor.

Be it enacted by the legislature of the State of Minnesota.

SECTION 1. That the lands, franchises, property, stock and capital of the Northern Pacific Railroad Company shall be liable to assessment and taxation at the same rate and in the same manner, and not otherwise, and shall be exempt from assessment and taxation to the same extent and upon the same terms and condition as the lands, property and franchises of the Lake Superior and Mississippi Railroad Company, as is provided in and by an act entitled "An act in relation to the taxation of lands granted to the Lake Superior and Mississippi Railroad Company," approved March third, eighteen hundred and sixty-five. Provided, however, that the gross earnings

of said railroad company on which a percentage is to be paid to the State shall include only the earnings of that portion of the Northern Pacific railroad constructed and operated by said company within the limits of this State.

SECTION 2. That said Northern Pacific Railroad Company shall have the right and authority to acquire and hold lands for
135 right of way depot grounds and for all necessary purposes of said company in all respects as provided by the general laws of this State as set forth in sections numbered consecutively thirteen to twenty-seven inclusive, of chapter thirty-four, title one, of General Statutes now in force. But where said company proceeds to condemn private property in more than one county in the same proceeding, the commissioners to be appointed shall be residents of the county where the property to be taken is situated, or of the county to which such county is attached for judicial purposes. And there is hereby granted to the Northern Pacific Railroad Company the right of way through and over any lands of this State to the same extent as is granted by act of Congress through and over the public lands to said company.

SECTION 3. That whenever the Northern Pacific Railroad Company shall connect with or cross the route or line of any other railroad within the limits of this State and a portion of the routes or lines of said railroads shall be parallel or coterminous, such portions may by agreement of the companies interested therein, be blended in one track, or a double track and side tracks, and may be owned and used in common for such length of time and upon such terms as may be agreed upon by said companies, and said companies shall thereby be held to have complied with the requirements of their respective charters in that particular, the same as if independent tracks had been built by each.

SECTION 4. This act is hereby declared to be a public act, and shall take effect and be in force from and after its passage, provided, said Northern Pacific Railroad Company shall within ninety days from the approval of the same file with the governor a notice of the acceptance by said company of the terms and conditions of this act.

Approved March 4, 1870.

136 SEC. 1. "That no inconvenience may arise by reason of a change from a territorial to a permanent State government, it is declared that all rights, actions, prosecutions, judgments, claims and contracts, as well of individuals as of bodies corporate, shall continue as if no change had taken place; and all process which may be issued under the authority of the Territory of Minnesota previous to its admission into the Union of the United States, shall be as valid as if issued in the name of the State."

SEC. 2. "All laws now in force in the Territory of Minnesota not repugnant to this constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the legislature."

Constitution of Minnesota, schedule.

137 UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, *ss:*

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 136 pages numbered consecutively from 1 to 136, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed — to said transcript.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 26th day of September, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth year.

Seal U. S. Circuit Court, District of Minnesota, Third Division.

OSCAR B. HILLIS, *Clerk.*

Endorsed on cover: Case No. 16,058. Minnesota C. C. U. S. Term No., 768. Thomas W. Pearsall, appellant, *vs.* The Great Northern Railway Company. Filed October 10, 1895.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1895.

No 768.

THOMAS W. PEARSALL,
Appellant,

vs.

THE GREAT NORTHERN RAILWAY COMPANY,
Respondent.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

BRIEF OF APPELLANT.

HENRY J. HORN,
Counsel of Appellant.

PIONEER PRESS CO., ST. PAUL, MINN.

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1895.

THOMAS W. PEARSALL,

Plaintiff and Appellant,

vs.

THE GREAT NORTHERN RAILWAY COMPANY,

Defendant and Respondent.

Appeal of Thomas W. Pearsall, from the circuit court of the United States for the District of Minnesota. In equity.

BRIEF OF APPELLANT.

ABSTRACT OR STATEMENT OF THE CASE.

The plaintiff, Thomas W. Pearsall, a citizen of the State of New York, filed his verified bill in equity in the circuit court of the United States for the District of Minnesota, as a stockholder of the defendant, for

the relief prayed in his bill, mainly to enjoin the defendant, the Great Northern Railway Company, a corporation, created and existing under the laws of the Territory and State of Minnesota, and a citizen of that state, from entering into and carrying out a certain proposed arrangement between that company and certain bondholders of the Northern Pacific Railroad Company, hereinafter more particularly referred to.

Printed record, page 1, etc.

The defendant filed an answer to the bill.

Printed record, page 13, etc.

The plaintiff sets up that he is the holder of 500 shares, being part of the $25,000,000 of the preferred paid-up stock of the defendant corporation, of $100 each, and of the value of more than $125 per share. He avers, in substance, that the proposed arrangement is illegal as hereafter stated, and that, if consummated, would depreciate his stock and damage him to the amount, exclusive of the costs, exceeding $5,000. The plaintiff sues for himself and all other stockholders similarly situated.

Application was made by the plaintiff, and heard upon his bill and answer for a preliminary injunction before the Hon. Walter H. Sanborn, judge of the said circuit court, which was argued at length by counsel on both sides and the application denied, the court filing an elaborate opinion.

Printed record, pages 12, 18, 19, 20 to 34.

The cause was finally brought on for final hearing upon bill and answer before the said court and a decree rendered thereon, in favor of the defendant, dismissing the bill with costs which were taxed.

Printed record, pages 35 to 36.

An appeal was prayed by the plaintiff thereon in open court to the supreme court of the United States, as a case within the provisions of section 5, of chapter 517, United States Statutes, 1890-1891, Fifty-first Congress, passed March 3, 1891, pages 827 and 828, and the said appeal was allowed and perfected and the return duly made and docketed prior to the commencement of the present term of court.

Printed record, pages 36 to 38.

The court in determining the action stated that he had decided the case upon the same grounds upon which the application for the preliminary injunction was denied.

The plaintiff's bill sets up the respective lines or systems of railroad owned and controlled by these two railroad companies, and the acts of legislature connected therewith.

These acts of legislature are given in extenso in the printed record, page 39, etc., whereby it appears that the defendant was incorporated under an act of the legislature of the Territory of Minnesota, entitled "An act to incorporate the Minneapolis and St. Cloud Railroad Company" (chapter 160 of the laws of 1856), approved March 1, 1856, page 294.

Section 1 is as follows:

"Section 1. John H. Stevens, William Hanson, Franklin Steele, Alfred E. Ames, R. P. Russell, J. P. Wilson, J. L. Crocker, George F. Brott, J. M. Winslow, A. M. Fridley, John Banfil, and all such other persons as shall hereafter become stockholders in the company hereby incorporated, shall be and are hereby made a body politic and corporate, by the name and style of the 'Minneapolis and Saint Cloud Railroad Company,' and by and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against in law and equity, in any and all courts and places whatsoever, as fully as natural persons; and the said corporation may make and use a common seal, and alter and renew the same at pleasure, and by their corporate name and style shall be capable of contracting and being contracted with, and of acquiring by purchase, gift, grant, devise, or otherwise, and of holding and conveying all such estate and property real and personal, as may be necessary or convenient to carry into effect the object and purposes of this act and of the said corporation."

Section 2 is as follows:

"Sec. 2. The said corporation is hereby authorized and empowered, and it is hereby declared to be the object and purposes thereof, to survey, locate, construct, complete, maintain, use, and operate, and at their pleasure alter the line thereof, a railroad with one or more tracks or lines of rails, from a point to be selected by this company, in Minneapolis, in the county of Hennepin, in the Territory of Minnesota, by the most feasible and practicable route to Saint Cloud, in the county of Stearns, on the Mississippi river, and also a main line of road to a point at or near the mouth of the Saint Louis river, together with all necessary and proper stations, depots, turnouts, engines, cars, and other appurtenances and furniture of a railroad."

Section 3 provides for capital stock in shares, etc.

Section 4 empowers the corporation to borrow money and mortgage its property.

Section 5 authorizes the construction of its road in sections.

Section 6 is as follows:

"Sec. 6. Said company is hereby authorized and empowered to connect its road by branches with the road of any railroad company or companies in the Territory or future State of Minnesota that are now chartered or may hereafter be chartered, or to become part owner or lessee of any railroad in said Territory of Minnesota, duly organized, or which may hereafter be organized, under the laws of said Territory or future State of Minnesota, may connect its road with the road of said company, and may in like manner, with the consent of said company, became part owner or lessee of the road of said company, or of any of its branches, or any portion thereof, situated in this territory, and the said company are hereby authorized and empowered to run a branch of said road from Minneapolis by way of West St. Paul to some point to be selected by said company on the Iowa state line."

Section 7 relates to surveys for right of way, etc.

Section 8 relates to condemnatory proceedings for the acquisition of lands, etc.

Section 9 is as follows:

"Sec. 9. If the incorporators named in this act determine to accept this charter they shall appoint three or more of their number, and such other person or persons as they may deem proper, as agents or commissioners to receive the subscriptions to the stock of this corporation, and direct the times and places when and where the books for receiving such subscription will be opened; and such books may be opened by different agents or commissioners at different places at the same time. Every person who shall subscribe for any stock of this corporation shall, at the time of subscribing, pay to the agent or commissioners two per cent on the amount of stock so subscribed."

Section 10 provides that "whenever a hundred thousand dollars shall have been subscribed to the stock of this corporation, and two per cent thereon paid, as aforesaid, the stockholders shall meet * * *

and elect directors, each share being entitled to one vote by the holder;" with other provisions as to election of directors.

Section 11 provides for assessments of installments on unpaid stock.

Section 12 is as follows:

"Sec. 12. The said corporation shall locate at least thirty miles of said road between Minneapolis and Saint Cloud (by way of Manhattan), and commence work thereon within two years from the time this act shall take effect, and shall complete and equip at least one track from Minneapolis and Saint Cloud, with suitable and safe switches and turnouts, within seven years from the same time; and the said corporation are hereby authorized and empowered to connect with any railroad running in the same direction with this road and where there may be any portion of another road which may be used by this company. This company shall not be bound to build such portions of road so long as they may use the portions of any other road which may answer the same purpose."

Section 13 relates to bridging streams.

Section 14 provides penalties for injuring railroads.

Section 15 regulates conductors, etc.

Section 16 as to alarm bell, etc.

Section 17 is as follows: "This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly, in any manner not destroying or impairing the vested rights of said corporation."

Section 18 provides that the act shall take effect immediately after its passage.

The said act was amended by an act approved Feb. 23, 1864, entitled "An act to amend an act entitled 'An act to incorporate the Minneapolis & St. Cloud Railroad Company,' passed March 1, eighteen hundred and fifty-six." (Chapter V. of Special Laws of the State of Minnesota, page 178.)

Printed record, page 47, etc.

Section 1 amended by substituting new incorporators.

Section 2 is as follows: "That the second section of said act, to which this is an amendment, shall be and read as follows: The said corporation is hereby authorized and empowered to survey, locate, construct, complete, maintain, use, and operate a railroad from Minneapolis to St. Cloud, and from St. Cloud to the navigable waters of Lake Superior, with all necessary and proper stations, depots, turnouts, engines, cars, and other appurtenances and furniture of a railroad. The said corporation are also authorized and empowered to survey, locate, build, and operate a branch railroad from St. Cloud to some point on the Minnesota river, between township ranges twenty-five and thirty-one west of the fifth principal meridian, with like privileges for stations, depots, turnouts, engines, cars, and the usual furniture of a first-class railroad."

Section 3 repeals section 12 of the original act of 1856, and provides for a new board of directors. It contains the following proviso: "Provided, that they accept this charter as amended by organizing for the purpose of executing and carrying the same into effect within six months from the passage of this act."

Section 4 is as follows: "And be it further enacted, that the said act to incorporate the Minneapolis and St. Cloud Railroad Company is hereby declared to be in full force and effect, except so far as the same is repealed or modified by this act."

The next important act of the legislature affecting this company is an act approved Feb. 28, 1865, "An act to amend an act entitled 'An act to incorporate the Minneapolis and St. Cloud Railroad Company, approved March 1, 1856,' and to repeal certain portions of an act amending the charter of said company passed Feb. 23, 1864," approved Feb. 28, 1865, being Chapter IV. of the Special Laws of the State of Minnesota of 1865, page 27.

Printed record, page 49, etc.

Section 1 of said act is as follows: "That, whereas, the incorporators or persons named in the first section of the act of the legislature of the late Territory of

Minnesota, entitled 'An act to incorporate the Minneapolis and St. Cloud Railroad Company, and approved March 1, 1856,' did, in the manner prescribed by said act, open books and receive subscriptions to the capital stock of said railroad company to an amount exceeding one hundred thousand dollars, upon which said stock so subscribed, the amount or sum of two per cent was actually paid in on or before the 15th day of March, 1857; and, whereas, the said stockholders of said company have ever preserved and maintained the status given to them by their said several subscriptions and payments (no further assessments having been made on the said stock); and, whereas, the holders of said stock have since organized said company, by the election of a board of directors and the other officers named in said act, in the manner therein pointed out, and have received additional subscriptions to the capital stock of said company, upon all of which two per cent thereof has been actually paid into the treasury of said company, and said company is and ever has been desirous of availing themselves of all the franchises granted by said act; and, whereas, without the consent of said stockholders or said company, the legislature of the State of Minnesota, by an act approved Feb. 23, 1864, and entitled 'An act to amend an act entitled an act to incorporate the Minneapolis and St. Cloud Railroad Company, passed March 1, 1856,' did undertake to amend said first-mentioned act by inserting as corporators persons other than those named as corporators in said first mentioned or original act, and other than the stockholders aforesaid; and did also in said amendatory act, in like manner, declare the said persons named therein, their assigns, survivors, and each of them, directors of said Minneapolis and St. Cloud Railroad Company, or said corporation, for the term of one year from the passage of said amendatory act, and until one hundred thousand dollars stock should be subscribed and taken, when the holders of the stock so subscribed and taken were directed to choose a new directory, and to organize in the manner set forth in said original act; and also directing said persons therein named as such directors to choose all the other officers pertaining to said company and empowering them to act as such until superseded by the directors chosen by the said stockholders; with a proviso, however, that the said persons named in said

amendatory act should accept the charter as thus amended by organizing for the purpose of executing and carrying the same into effect within six months from the passage thereof; and, whereas, no stock has ever been subscribed to the capital stock of said railroad company under or pursuant to or by virtue of said amendatory act; therefore, the first and third sections of said amendatory acts are, and each of them is, hereby repealed, and all power or authority conferred or attempted to be conferred by said sections, or either of them, as against the incorporators or persons named in the act thereby amended, or their associates, successors, or the organization in this act first named, is hereby revoked and annulled."

Section 2 of the said act is as follows: "The first section of said act, entitled 'An act to incorporate the Minneapolis and St. Cloud Railroad Company, passed March 1st, 1856,' is hereby re-enacted, the same as if it was here repeated in length; but the re-enactment thereof shall not in any manner injuriously affect the organization of said company first mentioned and referred to in this act, which said organization of said company is hereby in all respects legalized and confirmed, and declared to be the only legal representative of said company or corporation, and shall be recognized and treated as such in all courts or tribunals in this state or elsewhere; and the several directors and officers thereof, of said organization, and their successors, shall, whenever it shall or may become necessary or important to the interests of said company, be deemed the successors of the persons named as directors in said amendatory act, and of each and every of the officers by said persons chosen under the provisions of said amendatory act. Provided, that no provision in this act or the act to which this act is an amendment shall be so construed as to interfere with the rights, privileges, and franchises of any other land grant railroad company in this state existing at the time of the passage of this act or of the act to which this is an amendment."

Section 3 provides as follows: "That the twelfth section of the said act, entitled 'An act to incorporate the Minneapolis & St. Cloud Railroad Company,' approved March 1, 1856, is hereby re-enacted and amended so as to read as follows:

"'Section 12. The said corporation is hereby authorized and empowered to connect with or adopt as its own, on such terms as may be agreed upon between the parties or companies interested, any other railroad running in the same general direction with either of its main lines or any branch roads which said corporation is authorized to construct. And where there may be any portion of another railroad which may be so used by this company or corporation, it shall not be bound to build such portion of its own road or branches, so long as it may use the portion of any other road which may answer the same purpose.'"

Section 4 is as follows: "That section 2 of said charter or incorporating act is hereby amended by striking out the words 'by way of Mille Lac,' where they occur in said section."

Section 5 relates to increasing or diminishing the number of directors, etc.

Section 6 provides for separate organizations with sub-boards of directors for portions of or branches of its lines.

Section 7 provides for certain applications of swamp land grants by the state to the lines and branches of said company.

Section 8 is as follows: "The said Minneapolis and St. Cloud Railroad Company and each of its branches, being organized as aforesaid, shall have power to consolidate the whole or any portion of its capital stock with the capital stock or any portion thereof of the road or branch road of any other railroad corporation or company having the same general direction or location, or to become merged therein by way of substitution, upon such terms or conditions as the two companies may agree, by the consent of a majority of the stockholders of each company; and the two companies, when such consolidation has been made, shall control and manage, by the board of directors of both companies acting jointly, such consolidated road, until the first election of directors of said consolidating companies, when the stockholders of said companies shall choose,

at such time and place as they shall agree upon, a board of directors, not to exceed eleven in number, who shall have power to adopt a name for such consolidated road, and by which they shall be known and recognized; to adopt a common seal; to sue and be sued; contract and be contracted with; and shall have and enjoy all and singular the rights, right of way, privileges, and immunities of said consolidating companies, or either of them, as to such consolidated line before such consolidation; which said agreement of consolidation shall be in writing, signed by the presidents of said consolidating companies respectively, and a copy thereof filed in the office of the secretary of state."

Section 9 is as follows: "The said Minneapolis and St. Cloud Railroad Company may consolidate any portion of its road and property, and each branch being organized as aforesaid, may consolidate the whole or any portion of its branch road and property with the franchises of any other railroad company or any portion thereof, upon such terms and conditions as said companies, or a majority of the directors thereof, with the consent of the holders of a majority of the stock, respectively, may agree:

"Provided, that said consolidated road shall not be affected by or subject to any liens, judgments, deed of trust or mortgage, created upon or growing out of any subsequent agreement, liabilities or transactions connected with any other portion of said Minneapolis and St. Cloud Railroad Company, or of the road or branch with which it may be so consolidated.

Section 10 provides for the issue, by the said corporation or any branch or separate organization, of preferred or special stock:

"And the said company or branches may make such agreement as it may deem proper with the holders of any such special stock as to the administration of the portion of said railroad and any land grant appertaining thereto to which said stock may pertain, and for the separate organization of the holders of such special stock, for the purpose of that administration, and enabling them or directors chosen by them separately or in conjunction with the other directors to exercise in respect to the portion of the road to which such special

stock may pertain all the powers of the company subject to the provisions of such agreement when made and entered into."

Section 11 provides that a voting power may be given to the bondholders of said company or to its branches, etc.

Section 12 is as follows: "The Minneapolis and St. Cloud Railroad Company, and each branch thereof having a separate organization as above provided for, may consolidate the whole or any portion of its main lines or branch railroads, and all the property, rights, powers, franchises, grants, and effects pertaining to such roads with the rights, powers, franchises, grants, and effects of any other railroad company, either within or without this state, upon such terms and conditions as such company or branch organization, or a majority of the directors thereof, may respectively agree; and the railroad company in which such railroad shall become vested by such consolidation shall thereafter hold and enjoy all rights, grants, and powers, and franchises in respect to such which the company or branch possessed before the consolidation; but the said Minneapolis and St. Cloud Railroad Company or branch organization thereof shall remain vested with all its other rights, powers, privileges and franchises."

Section 13 makes the act take effect from its passage.

By an act approved March 6, 1869, entitled "An act to amend the charter of the Minneapolis and St. Cloud Railroad Company," being Chapter LIII. of the Special Laws of the State of Minnesota, page 245, the further provisions appear:

Printed record, page 56, etc.

Section 1 provides for changing the name of the company or its branches by vote of the directors.

Section 2 extends time for grading, etc

Section 3 provides for filling certain vacancies of officers.

Section 4 is as follows: "The said Minneapolis and St. Cloud Railroad Company are hereby authorized to convey, construct, operate, and maintain, under the provisions and restrictions of their charter, a branch road from St. Cloud up the Sauk Valley to some point upon the St. Paul and Pacific Railroad or to some point on the Red River of the North, by the way of Alexandria, and all the rights, franchises, privileges, and immunities heretofore granted to said company upon the main line or any branch thereof, shall apply to said branch road as fully to all intents and purposes as the rights and privileges heretofore granted to said company."

Section 5. Act to take effect from its passage.

The bill avers that all of these special acts referred to in said paragraph 1 were accepted. Paragraph 2 of bill.

The bill avers that, prior to the year 1880, the Minneapolis and St Cloud Railroad Company had constructed and put in operation that portion of its lines from St. Cloud, Minn., to Hinckley, Minn. Paragraph 3 of bill.

That a separate organization or corporation was organized under the acts before mentioned for the construction of the line from Hinckley to Duluth, Minn., and West Superior, Wis., on Lake Superior, under the name of the "Eastern Railway Company," which has been constructed and is in operation. Paragraph 4 of bill.

That in the year 1889 the Minneapolis and St. Cloud Railroad Company duly changed its name to its present name of the Great Northern Railway Company, the defendant. Paragraph 5 of bill.

That prior to Feb. 1, 1890, the St. Paul, Minneapolis

and Manitoba Railway Company, a corporation created and existing under the laws of the Territory and State of Minnesota, but authorized to build and operate railways also in the late Territory of Dakota, and present states of North Dakota and South Dakota, in Montana, Idaho, and Washington, leased for 999 years its lines to said defendant, which said defendant has taken possession of and operated since, consisting of a line extending from St. Paul, via Minneapolis, etc., to the northern boundary of the State of Minnesota, at St. Vincent, and connecting with another line extending westward through Minnesota, the Dakotas, Montana, Idaho, and Washington to Puget Sound, at Everest, and other lines and branches particularly described in said bill.

That it is the owner of the capital stock of the Eastern Railway Company and of other companies connected with defendant's lines, forming a "combined railway system under the name of the Great Northern Railway line," comprising an aggregate of nearly 4,500 miles. Paragraph 6 of bill.

So that its railway system embraces a line extending continuously from the waters of Lake Superior to Puget Sound and a line extending to the northern boundary of the state, besides other lines and branches particularly described in the bill.

Paragraph 7 sets up particularly the interest of plaintiff as a stockholder of 500 shares of the $25,000,000 of preferred paid-up stock, issued by the defendant, etc.

Paragraphs 8 and 9 of the bill sets forth the lines of the Northern Pacific Railroad Company and the legislation connected with it, embracing its charter and amendments, all of which are set forth at length in the printed record (pages 61, etc.), whereby it appears that it was chartered by an act of congress entitled "An act granting land to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific Coast by the northern route, approved July 2, 1864, 13 Stat. at Large, 365." It was authorized to construct and maintain its line "beginning at a point on Lake Superior in the State of Minnesota or Wisconsin, thence westerly by the most eligible railroad route as shall be determined by said company within the territory of the United States on a line north of the forty-fifth degree of latitude to some point on Puget Sound with a branch via the Valley of the Columbia River to a point at or near Portland, Oregon, leaving the main trunk line at the most suitable place not more than three hundred miles from its western terminus." (Section 2.)

The act contained a reservation as follows: "That, the better to accomplish the object of this act, namely, to promote the public interests and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes," congress may at any time, having due regard for the rights of said Northern

Pacific Railroad Company, add to, alter, amend, or repeal the act. (Section 20.)

That under these acts and resolutions of congress, etc., the Northern Pacific Railroad Company had, prior to Jan. 1, 1880, constructed its main line, extending from Ashland, in the State of Wisconsin, westward across the State of Wisconsin, and across the states of Minnesota, North Dakota, Montana, and Idaho and in the State of Washington, to Wallulla Junction, therein; also, all that other part of its main line of railroad extending from Portland, Oregon, to Tacoma, Wash. That it owns the stock of several corporations, whereby it controls certain branch lines set forth in said bill, and having a connected line from St. Paul to Winnipeg in Manitoba.

See answer of defendant, printed record, page 14.

That it owns and controls in its system nearly 4,500 miles of road.

The geographical, terminal, and intermediate points show that these two systems depend largely upon the same fields for their business and are practically for the most part parallel lines and necessarily competing lines.

The answer avers that the lines of the two systems run side by side for at least eighty miles between St. Paul and Sauk Rapids, in Minnesota.

(Id., page 15.)

By an amendment to the bill, ordered by the circuit court, an allegation at the end of the tenth paragraph

is added and made a part of the tenth paragraph, with the same effect as if the bill had been amended before answer, to-wit: "Plaintiff further alleges that the defendant and the said Northern Pacific Railroad Company are respectively common carriers and competing lines."

See page 35 of printed record.

Paragraph 10 of the bill shows the condition of the road of the Northern Pacific Railroad Company.

Its capital stock outstanding upwards of $80,000,000.

Its bonded debt secured by mortgages, viz.: Missouri Division bonds, $1,965,000; Pend d'Oreille Division bands, $1,348,000; general first mortgage bonds, $44,482,000; general second mortgage bonds, $19,626,000; general third mortgage bonds, $11,298,000; consolidated mortgage bonds, $42,587,000.

Most of the interest accruing during the last two years remains unpaid.

Prior to the month of August, 1893, the Northern Pacific Railroad Company had become insolvent and had contracted a large floating debt, which it was unable to pay, and it was in the hands of receivers appointed by the several circuit courts of the United States of the districts traversed by its lines of road.

The allegations of the bill contained in these ten paragraphs are admitted in the answer.

See answer, printed record, page 13.

The twelfth paragraph of the bill sets forth the issue of the preferred paid-up stock of defendant and the por-

tion held by himself, and its value, etc.; that if the arrangement in question is consummated this stock will be greatly depreciated, viz., over $5,000, and that the consummation of said arrangement will work irremedial injury to plaintiff and other stockholders similarly situated; that he has frequently requested the defendant to desist from carrying out said arrangement, and it has always refused to desist.

This paragraph is admitted in the answer, except that it denies that the stock of plaintiff and other stockholders will be depreciated.

See answer, printed record, pages 16, 17.

Paragraph 11 of the bill *sets forth the proposed arrangement. The answer, however, does not fully assent to this paragraph, but sets up the defendant's version,* which is as follows:

The defendant, with the approval of a large majority of its stockholders and the holders of a majority of the several classes of outstanding bonds secured by said second, third, and consolidated mortgages of the said Northern Pacific Railroad Company, have entered into an arrangement in substance as follows: The holders of the said several classes of bonds shall obtain a decree of foreclosure in said actions and for the sale of the railroad properties and franchises of the Northern Pacific Railroad Company, including its franchise to be a corporation subject to the said divisional and general first mortgages mentioned in paragraph 10 of the bill, and shall cause the same to be bid in and be purchased by a committee of bondholders or their agents for the benefit of all the holders of said outstanding bonds, secured by the mortgages so foreclosed, and shall cause a re-organization of the said railway franchises and property as a new corporation, either under the said acts and joint resolutions of congress relating to the Northern Pa-

cific Railroad Company or under some other proper and sufficient legislation of the United States or of some one or more states.

Upon such foreclosure sale and re-organization the re-organized company may issue its bonds to an amount in the aggregate of $100,000,000 or over, and its full paid capital stock of $100,000,000, this defendant to guaranty for the benefit of the holders of such bonds the payment of the principal thereof, together with interest thereon to an amount in the aggregate of such interest guarantee, not to exceed $6,200,000 per year; which guarantee shall, if required by said reorganized company, be written and executed upon the back of each of said bonds. Among other good and valuable considerations for such guarantee and as a compensation for the risk to the stockholders of the defendant company which may result by reason of the said guaranty, in the way of a possible diversion of a portion of the earnings of the defendant to make good its guaranty, the said reorganized company shall transfer or cause or procure to be transferred by its stockholders to the shareholders of the defendant company, or to some person or corporation as trustee for their use, one-half part of the capital stock of said reorganized company. The Northern Pacific Company shall join with the defendant in providing reasonable and adequate facilities for an interchange of cars and traffic between their respective lines, and shall interchange traffic with defendant and operate its trains, to that end upon reasonable, fair, and lawful terms, under joint tariffs or otherwise. The defendant shall have the right to bill and route its traffic, passengers, and freight from points on its line by way of such connections as now exist or may hereafter be constructed between said line and the Northern Pacific Company to Winnipeg, Tacoma, Portland, and all points in the different states through which the line of the Northern Pacific Railroad extends and not reached by the line of this defendant. The defendant shall have the right to make use of the depots and terminal facilities of the Northern Pacific Company at Spokane Falls and other points where such use shall be found to be convenient and economical jointly with that company, and upon reasonable, fair, and lawful terms, which shall insure to the defendant a large saving on the cost and expense which it must otherwise necessarily incur in

constructing and operating depots and terminals of its own."

The defendant also sets up in its answer an act of the legislature of the State of Minnesota, approved March 4, 1870, entitled "An act in relation to the taxation and to facilitate the construction of the Northern Pacific Railroad" This is one of the exhibits in the printed record, but a copy of sections 3 and 4 is appended for convenience.

The act was accepted by the said company.

"Sec. 3. That whenever the Northern Pacific Company shall connect with or cross the route or line of any other railroad within the limits of this state and a portion of the routes or lines of said railroads shall be parallel or coterminous, such portions may, by agreement of the companies interested therein, be blended in one track, or a double track and side tracks, and may owned and used in common, for such length of time and upon such terms as may be agreed upon by said companies, and said companies shall thereby be held to have complied with the requirements of their respective charters in that particular, the same as if independent tracks had been built by each.

"Sec. 4. This act is hereby declared to be a public act, and shall take effect and be in force from and after its passage. Provided, said Northern Pacific Railroad Company shall, within ninety days from the approval of the same, file with the governor a notice of the acceptance by said company of the terms and conditions of this act."

Printed record, pages 75, 76.

The answer avers that the Northern Pacific Railroad Company accepted this act.

The plaintiff claims that the said proposed arrangement is within the prohibition of the following general laws of the State of Minnesota, being chapter 29 of the

General Laws of Minnesota of 1874, and chapter 94 of the General Laws of that state of 1881, referred to in the bill, and which plaintiff claims applies to and controls the charter and amendments of the defendant, viz.:

Chapter 29 of the General Laws of 1874, page 154, "An act relating to railroad corporations and common carriers."

"Section 1. No railroad corporation, or the lessees, purchasers or managers of any railroad corporation shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line; and the question whether railroads are parallel or competing lines shall, when demanded by the parties complainant, be decided by a jury as in other civil issues.

"Sec. 2. This act shall take effect and be in force from and after its passage."

Printed record, page 75.

Chapter 94 of the General Laws of 1881, page 109, "An act to authorize any railroad company to lease, purchase, or in any way become owner of, or to control any other railroad corporation or to consolidate therewith."

"Section 1. Any railroad corporation, either domestic or foreign, whether organized under a general law or by virtue of a special charter, may lease or purchase, or in any way become owner of or control, or hold the stock of, any other railroad corporation, when their respective railroads can be lawfully connected and operated together so as to constitute one continuous main line with or without branches.

"Sec. 2. Any railroad corporation, whether organized under a general law or by virtue of a special charter of the State or Territory of Minnesota, or under the laws of any other state or states or territory, whose lines of railroad now or hereafter constructed within or without this state, can be lawfully connected and operated together to constitute one continuous main line, with or without branches, so as to admit of the passage of trains over them without break or interruption, may consolidate their stock and franchises upon such terms as may be agreed upon, so as to become one corporation by any name by them selected.

"Articles stating the terms of consolidation shall be approved by each corporation by a vote of the stockholders owning a majority of the stock, in person or by proxy, at either a regular annual meeting thereof, or at a special meeting called for that purpose, by notice of at least thirty (30) days, stating the object of such meeting, to be addressed to each of such stockholders when their place of residence is known, and deposited in the postoffice and published for at least three (3) successive weeks in one newspaper in at least one of the cities or towns in which each of said corporations has its principal business office, or by the consent in writing of a majority of such stockholders annexed to such articles; a copy of such articles of consolidation and of the record of such approval or of such consent, accompanied by lists of the stockholders of said corporation and the number of shares held by each, duly certified by their respective presidents and secretaries, with the respective corporate seals thereto affixed of said corporations, shall be filed for record in the office of the secretary of state of this state, and of the state or states or territories by or under whose laws the said corporations parties to such articles of consolidation were created or exist, before any such consolidation shall have any validity or effect. Upon the filing for record of said copies the said corporations shall become merged in the new corporation provided for in said articles, to be known thereafter by the corporate name therein adopted, and shall within this state, succeed to all the rights, powers, franchises, contracts, privileges, immunities, liabilities, obligations and duties, liabilities to or exemption from taxation, commutations, property,—real, personal and mixed,—and things in action as fully in all respects as the same were possessed

by such old corporation or corporations at the time of such consolidation under the laws of this state; and such new corporation shall hold and enjoy the same, and all and every part thereof, without impairment or change, as fully in the same manner and to the same extent as if the said consolidation had not taken place. Provided, that all rights of creditors and all the liens upon the property of either of said old corporations shall be preserved unimpaired, and all the debts, liabilities, and duties of either of said consolidating corporations shall thenceforth attach to said new corporation, and be enforcible to the same extent and in the same manner as if such debts, liabilities, and duties had been originally incurred by it. Provided, further, that all such corporations shall be subject to the laws of this state and the jurisdiction of the courts of this state in the same manner and to the same extent as domestic corporations.

"Sec. 3. No railroad corporation shall consolidate with, lease, or purchase, or in any way become owner of or control, any other railroad corporation, or any stock, franchises, rights of property thereof, which owns or controls a parallel or competing line.

"Sec. 4. This act shall take effect and be in force from and after its passage."

Printed record, pages 73-75.

The defendant claimed in effect that the provisions of consolidation or connection with other railroads or of that nature in the charter of 1856 and amendments of 1864-1865 were vested rights of the corporation, excepted in the seventeenth section of the charter of 1856 from the reservation of the power to amend, and that as such vested rights they were protected by the constitution of the State of Minnesota and the constitution of the United States.

The Hon. Walter H. Sanborn, judge of the circuit court, considered this the turning point in the controversy, and adopted the defendant's position in this

respect. His opinion is given at length in the printed record.

The syllabus is appended here for convenience:

First—An accepted act of incorporation of a private corporation is a contract between the state and the corporation, and any law of a state which destroys or impairs any valuable franchise granted by such an act violates section 10, Article I., of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts, and is ineffective unless the right so to destroy or impair the franchise is reserved by the state before or at the time the charter is granted.

Second—The Territory and State of Minnesota, by chapter 160 of the laws of the territory for 1856, and chapter 4 of the special laws of the state for 1865, granted to the Minneapolis & St. Cloud Railroad Company the right to build, operate and lease railroads, and the right to consolidate its stock, its railroad or its property with the stock of the railroad or the property of any other railroad corporation. These grants were accepted by the corporation prior to 1866, and this corporation has, by a change of name, become the defendant, the Great Northern Railway Company.

Third—The right to consolidate with another railroad corporation, includes the right to make a fair and lawful agreement with it for the interchange of traffic

and for the joint use of terminal facilities, the right to buy one-half of its stock for the shareholders of the purchaser, and the right to guarantee the payment of its bonds.

Fourth—This right to consolidate was a valuable and vested right of the corporation after its acceptance of the grants, and section 17 of the act of 1856, which is, "This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly in any manner not destroying or impairing the vested rights of said corporation," did not reserve to the territory or to the state the power to impair or destroy this vested right.

Fifth—The use of the franchise granted to a corporation is not a condition precedent to the vesting in the corporation of the right to use it.

Sixth—If chapter 29 of the Laws of Minnesota for 1874, and section 3 of chapter 94 of the Laws of Minnesota for 1881, which prohibit any railroad corporation from consolidating with or purchasing the stock of any corporation which owns or controls a parallel or competing line of railroad should be construed to be amendments of the acts cited, they are broad enough in their terms to prohibit the defendant corporation from consolidating with any corporation which owns or controls the Northern Pacific system of railroads, and from purchasing one-half the stock of such a corporation for the use of its shareholders.

Seventh—If they should be construed to be such amendments, they would impair to that extent the

vested right of the defendant corporation to consolidate with any railroad corporation whatever, which was granted to it by its charter, and they would be ineffective, because they would be in violation of the constitutional provision that no state shall pass any law impairing the obligation of contracts; and, also, of the contract in the act of incorporation, that the state would make no amendment destroying or impairing the vested rights of this corporation.

Eighth—If these acts should not be construed to be amendments of the charter, they leave this right of the defendant to consolidate, unaffected.

Ninth—In either case, the agreement made by the Great Northern Railway Company to purchase one-half the stock of a new corporation which is to own or to control and operate the Northern Pacific system of railroads, many of which are lines either parallel to or competing with the lines owned or controlled and operated by the Great Northern Railway Company, to make a just and fair traffic agreement with this corporation, and to guarantee the payment of its bonds, is not rendered illegal by these acts, and its performance cannot lawfully be enjoined on account of them.

Printed record, pages 20, 21.

The defendant cited on the argument the following provisions of the constitution of the State of Minnesota, viz.:

"No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts shall ever be passed." (Article 1, bill of rights, section 11.)

"All laws now in force in the Territory of Minnesota, not repugnant to the constitution, shall remain in force until they expire by their own limitation or be altered or repealed by the legislature." (Schedule, section 2.)

"No law shall embrace more than one subject, which shall be expressed in its title." (Article 4, section 27.)

The prominent questions discussed in the circuit court, or which arise in the case, are:

1. Is the proposed arrangement in question within the prohibition of the General Laws of Minnesota (chapter 29 of the laws of 1874, and chapter 94 of the General Laws of 1881) or against the public policy of said state?

2. Are the said statutes controlling or binding on the defendant, involving upon this point the construction of section 17 of the charter of the defendant, or act of 1856, and the clause of said section respecting vested rights?

3. Are the said statutes of Minnesota controlling or binding upon the said defendant as to this subject, and under the facts of this case, irrespective of the reservation of the power of amendment in said section 17?

4. Did the said acts of 1874 and 1881 sufficiently conform to the requirements of the constitution of the State of Minnesota in section 27 of article 4, before referred to?

SPECIFICTIONS OF ERROR RELIED ON BY APPELLANT.

1.

The circuit court erred in deciding that the proposed arrangement referred to could be lawfully entered into and carried out by the defendant.

2.

The circuit court erred in deciding that the defendant had a vested right under its charter and amendments to enter into and carry out the proposed arrangement referred to, notwithstanding the General Laws of Minnesota, chapter 29 of 1874, and chapter 94 of 1881, and the public policy of that state.

3.

The circuit court erred in deciding that section 17 of the charter of 1856 of said defendant did not render said charter or its amendments subject to said General Law of Minnesota, chapter 29 of 1874 and chapter 94 of the laws of 1881, or subject to the power of amendment or control of the legislature, of similar nature or in substantial matters.

4.

The circuit court erred in deciding that the legislation of the State of Minnesota, chapter 29 of 1874 and chapter 94 of 1881, did not control and apply to the charter of said defendant and amendments, irrespective of said section 17.

5.

The circuit court erred in deciding that the admitted facts of the case did not entitle plaintiff to the relief prayed in his bill.

6.

The Northern Pacific Railroad Company had no power to enter into the said proposed arrangement, nor vested rights which would be interfered with by the said legislation of the State of Minnesota, chapter 29 of the laws of 1874 and chapter 94 of the laws of 1881, and therefore it was error in the circuit court to decide that such arrangement could be legally entered into and carried out.

7.

The circuit court erred in rendering a decree against the plaintiff and dismissing the bill.

ARGUMENT.

Preliminary.

The plaintiff as a stockholder was entitled to bring such a suit to enjoin an act of the corporation which was ultra vires, or illegal. (Cook on Stockholders, section 666, and authorities therein cited.) This position was not disputed by the defendant.

I.

THE PROPOSED ARRANGEMENT IN QUESTION IS WITHIN THE PROHIBITION OF THE GENERAL LAWS OF MINNESOTA (chapter 29 of the General Laws of 1874 and chapter 94 of the General Laws of 1881) aside from the claim of the defendants of exemption therefrom.

The act of 1874—

It declares that "no railroad corporation shall consolidate the *stock*, *property*, or *franchises* of such corporation with, or *lease* or purchase the works or franchises of, or in any way control, any other railroad corporation owning or having under its control a parallel or competing line, nor shall any officer of such railroad corporation act as the officer of any other railroad corporation owning or having the control of a parallel or competing line."

This language is copied from the new constitution of the State of Pennsylvania, adopted Nov. 3, 1873, section 5 of article 17.

Its object obviously was to protect the public from monopoly arising from combinations of competitive railroad lines. Parallel lines are ordinarily competitive lines. The act, however, makes sure, and at the same time discloses its object, by expressly directing the prohibition to competitive lines. The law is very comprehensive, so as to forbid any action between such competing lines or their officers, which may destroy or subvert this competitive feature, whether by consolidation of stock, or property, or franchises, or lease, or purchase, or "in any way control," etc.

Consolidation of railroads in other respects, under certain circumstances has been provided by the rail-

road laws of the state beginning in 1858, chapter 70, General Laws of 1858, section 21, page 172, General Statutes (revision of 1866), chapter 34, section 36, page 269, General Statutes (edition of 1878), chapter 34, section 66, page 381.

The act of 1858 provides, that whenever the lines of railroad of any railroad company in this state or any portion of such lines have been or may be constructed so as to admit the passage of burden or passenger cars over any two or more of such roads continuously, without break or interruption, such companies are hereby authorized to consolidate themselves into a single corporation in the manner following (then follows the maner of so doing), and the law so remained substantially, except so far as it might be affected by the said statutes of 1874 and 1881, before noticed.

Chapter 94 of the General Laws of 1881, before noticed, may be considered in pari materia, with this railroad legislation. Section 1 provides, that "any railroad corporation, either domestic or foreign, whether organized under a general law or by virtue of a special charter, may lease or purchase, or in any way become owner of or control or hold the stock of any other railroad corporation, when the respective railroads can be *lawfully* connected and operated, *so as to constitute one continuous main line with or without branches.*"

Section 2 provides how this consolidation is to be effected.

Section 3 emphasies the prohibition of chapter 29 of the General Laws of 1874, as follows: "No railroad corporation shall consolidate with, lease, or purchase, or in any way become owner of or control any other railroad corporation, or any stock, franchises, rights of property thereof, which owns or controls a parallel or competing line."

The defendant and the Northern Pacific Railroad Company are shown by the answer as before noticed to have literally parallel lines for eighty miles from St. Paul to Sauk Rapids in Minnesota, and it is apparent from the geographical terminal points and intermediate points through which they run that they are for the most part practically parallel. The answer admits, as part of paragraph 10 of the bill, that the defendant and Northern Pacific Railroad Company are common carriers, and that their lines are "competing lines," so that the defendant and the Northern Pacific Railroad Company are within the purview of said chapter 29 of the laws of 1874 and chapter 94 of the laws of 1881.

The proposed arrangement in question (hereafter called "the arrangement") provided for a foreclosure of the last three classe of mortgage bonds (second, third and consolidated bonds), before mentioned, of the Northern Pacific Railroad Company, amounting to $73,511,000, exclusive of about two years' interest, and a reorganization by these bondholders, who expect to purchase the road at the foreclosure sale. The reorganized company is to issue its bonds for $100,000,-

000 or more, secured by mortgage of the road, etc., and is also to issue $100,000,000 paid-up stock. The management also provides that "the said corporation or reorganized company *shall transfer* or cause or procure to be transferred by its stockholders to the shareholders of the defendant company, or to some person or corporation as trustee for *their use*, one-half part of the capital stock of said reorganized company." The defendant was to guaranty the said issue of bonds and the interest in an amount in the aggregate of such interest guarantee not to exceed $6,200,000 per year. The two companies were to interchange traffic and cars and might operate their trains under joint tariffs, etc. (See answer.)

By the transfer of half of the capital stock of this new organization to the shareholders of the defendant or to a trustee in their interest or for their use would give to the defendant practically the control of the new organization and destroy or subvert its competitive feature or attitude. By this plan the half of the capital could at once or directly be transferred by the reorganized company to the trustee who is to hold it in the interests or for the use of the defendant or its shareholders. This stock is to be trasferred to the shareholders of the defendant or their trustee, who, having the legal title of the same, could of course vote the stock at elections for directors and on all important measures, so that, practically, nothing could be done in the management of the new organization without the consent of these stockholders of the defend-

ant or their trustee. But practically this half of the capital stock of the reorganized company would be a majority of the whole, until all of the remaining half, or $50,000,000, of said stock was sold. This might be, and probably would be, the work of considerable time, and in the meantime the traffic arrangement referred to and other important details of the arrangement would or might be settled by a majority of the stockholders of said stock who were acting in the interest of the defendant. It is obvious that the independence and competitive character of the Northern Pacific Railroad Company as a reorganized company would be entirely subverted and destroyed, and it would cease to be an independent competitive or rival railroad company. The defendant would thus obtain control of the reorganized company contrary to the provisions of the said acts of 1874 and 1881, and the result would be in substance if not in form a consolidation of railroad companies having competing lines as well as parallel lines, bringing the case clearly within the prohibition of the said statutes.

The Hon. Judge Sanborn had no difficulty upon this point. See sixth paragraph of syllabus of his opinion.

The act of March 4, 1870, pleaded by defendant in its answer, as far as it affects the Northern Pacific Railroad Company, has been set forth in the statement of the case. That act, while it provides for common facilities under certain circumstances, to be arranged by agreement of the companies concerned with respect to the use of their tracks, in no way interferes with

with the independence of the Northern Pacific Railroad Company or the exclusive management of its road, or of the independence or management of any other road.

Judge Sanborn in his opinion states in substance the authority which the defendant claims for making the said proposed arrangement, and which he decides are vested rights, exempting the defendant from the operation of said chapter 29 of the General Laws of 1874 and chapter 94 of General Laws of 1881. The part of his opinion referred to is as follows: "In 1856 the legislature of the Territory of Minnesota passed 'An act to incorporate the Minneapolis & St. Cloud Railway Company.' (Laws of Minnesota, 1856, chapter 160.) By that act the territory granted to the corporation the right to be a corporation; the right to acquire by purchase, gift, grant, devise, or otherwise, to hold and to convey all such estate and property, real and personal, as should be necessary or convenient to carry into effect the object and purpose of the corporation (section 1); the right to construct and operate certain railroads (sections 2 and 6); the right to be part owner and lessee of any railroad in the territory (section 6); the right to exercise the power of eminent domain (section 7); and the right to connect with and to use any railroad running in the same general direction as any of its proposed railroads (section 12)."

The last section of the act is:

"Sec. 17. This act is hereby declared to be a public act, and may be amended by any subsequent legislative

assembly in any manner not destroying or impairing the vested rights of said corporation."

In 1865 the legislature of the State of Minnesota passed an act to amend the act of 1856, supra. (Special Laws of Minnesota, 1865, chapter 4.)

By that act the state granted to the Minneapolis and St. Cloud Railway Company the right to connect with or adopt as its own any other railroad running in the same general direction with either of its main or branch lines (section 3); the right to consolidate the whole or any portion of its capital stock with the capital of any other railroad corporation having the same general direction or location (section 8); the right to consolidate any portion of its road and property with the franchises of any other railroad company or any portion thereof (section 9); and the right to consolidate the whole or any portion of its lines of railroad and the property pertaining thereto with the rights, powers, franchises, grants, and effects of any other railroad (section 12).

The arrangement also allows these companies to make joint tariffs. Such a provision would effectually put an end to all competition between the companies. While some of the provisions, such as the guaranty and interchange of cars and common use of portions of tracks or depot facilities separately (if not ultra vires) and under certain circumstances might not be within the prohibition of the statutes referred to, provided the companies were acting independently, it is obvious that all these details or provisions are but

parts of a general plan, the results of which must destroy and subvert the independence and competitive position of the Northern Pacific Railroad Company, or its successor, the reorganized company, and subject it to the control of the defendant.

II.

THE SAID STATUTES (OF 1874 AND 1881) CONTROL THE CHARTER OF THE DEFENDANT, OR ACT OF 1856, AND AMENDMENTS THERETO, AND THE RESERVATION IN SECTION 17 IN SAID ACT OF 1856 REMOVES ANY IMPEDIMENT TO SUCH LEGISLATIVE CONTROL. (SPECIFICATION OF ERRORS, NUMBERS 3 AND 7.)

Judge Sanborn, in his opinion, states the following proposition: "An accepted act of incorporation of a private corporation is a contract between the state and the corporation; any law of a state which impairs or destroys a valuable franchise granted by such an act impairs the obligation of the contract and is without effect, unless before or at the time of the passage of the act, the state reserved the right to enact such a law." (Opinion.)

The plaintiff claims that the reservation in section 17 of the said act or charter of 1856 removes any impediment which might exist otherwise in the way of the application and operation of the said acts of 1874 and 1881 to the said act of 1856 and amendments. This reservation is in the following language:

"Sec. 17. This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly in any manner not destroyed or impairing the vested rights of said corporation."

The Dartmouth College Case (4 Wheaton, 519) was decided in 1819. Judge Story, in his concurrent opinion, shows that the legislature may reserve the power to control a grant or franchise. Id., 712.

This suggestion of Judge Story has been largely acted upon by the states; in some instances by providing such a reservation in the state constitution, and in some instances by a general statute upon the subject, and in others by incorporating such a reservation in the charter itself, and this doctrine has been sanctioned and affirmed by several decisions of the supreme court of the United States.

In the case of Tomlinson vs. Jessop, 15 Wallace, 454, involving the charter of the Northeast Railroad Company, incorporated by the State of South Carolina in 1851—

At that time a general law of the state was in existence, passed in 1841, which enacted that the charter of every corporation subsequently granted, and any renewal, amendment, or modification thereof, should be subject to amendment, alteration, or repeal by legislative authority, unless the act granting the charter or the renewal, amendment, or modification, in express terms excepted it from the operation of the law.

The charter of that company contained no reservation in express terms of such a power in the legislature. It was held, however that the charter was subject to the previous general law upon that point and that the legislature had control in accordance with the general

reservation expressed in the act of 1841. By a subsequent act of the legislature an attempt was made to pass a law in conflict with the provision of the charter of the said corporation, and subsequent amendment thereof, in relation to certain exemptions from taxation.

Justice Field, in delivering the opinion of the court, says: "It is true that the charter of the company when accepted by the corporation constituted a contract between them and the state, and that the amendment when accepted by the corporation formed a part of the contract from that date and was of such obligatory character, and it may be equally true as stated by counsel that the exemption from taxation [the point in question] added greatly to the value of the stock of the company and induced the plaintiff to purchase the shares held by him. But these considerations cannot be allowed any weight in determining the validity of the subsequent taxation. The power reserved to the state by the law of 1841, authorized any change in the contract as it originally existed or as subsequently modified, or its entire revocation. The original corporators or subsequent stockholders took their interest with knowledge of the existence of this power and of the possibility of its exercise at any time in the discretion of the legislature. The object of the reservation and of similar reservations in other charters is to prevent a grant of corporate rights or privileges in a form which will preclude legislatures interfering with their exercise, if the public interest should at any time require such interference. It is a provision intended to preserve to the state control over its contracts with the corporators which without that provision would be irrepealable and protected from any measures affecting its operation. * * * The reservation affects the entire relation between the state and the corporation, and places under legislative control all rights, privilges, and immunities, derived by its charter direct from the state; rights acquired by third parties and which have become vested rights under the charter in the legitimate exercise of its power stand upon different footing." Id., pages 457-459.

In the case of Hamilton Gas Light & Coke Company vs. City of Hamilton, 146 U. S., page 258—

The constitution of Ohio, adopted in 1851, declared that "no special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the general assembly;" that "the general assembly shall pass no special act conferring corporate powers," and that corporations may be formed under general laws, but all such laws may from time to time be altered or repealed." (Const. of Ohio, section 2, article 1; sections 1 and 2, article 13.)

In that case the city of Hamilton claimed the right to erect gas-works and manufacture its own gas, which was disputed by the corporation-plaintiff as being in conflict with its charter.

Justice Harlan, in his opinion adverse to the claim of the corporation, says: "A legislative grant to a corporation of special privileges, if not affected by the constitution, makes a contract, but where one of the conditions of the grant is, that the legislature may alter or revoke it, a law altering or revoking, or which has the effect to alter or revoke, the exclusive character of such privileges cannot be regarded as one impairing the obligation of the contract, whatever may be the motive of the legislature or however harshly such legislation may operate in the particular case, upon the corporation or party affected by it. The corporation, by accepting the grant subject to the legislative power so reserved by the constitution, must be held to have assented to such reservation." These views are supported by the decisions of this court in Greenwood vs. Freight Company, 105 U. S. 13. The question was as to the scope and effect of a clause in the general statutes of Massachusetts, providing that every act affecting the incorporation, passed after a certain day, "shall be subject to amendment, alteration, or repeal, at the pleasure of the legislature."

This court, referring to that clause, says: "An act may be amended; that is, it may be changed by adding to its terms, or by qualification of the same. It may be altered by the same power, and it may be repealed. What is it may be repealed? It is the act of incorporation. It is this organic law on which the existence of the company depends which may be repealed, so that it shall cease to be a law, or the legislature may *adopt the milder course of amending the law* in matters which need amendment or altering it when it needs substantial change. All this may be done at *the pleasure of the legislature.* That body need give no reason for its action in the matter. The validity of such action does not depend on the necessity for it nor on the soundness of the reason which pron pted it. The words, 'at the pleasure of the legislature' are not in the clauses of the constitution of Ohio, or in the matter to which we have referred. *But the general reservation* of the power to alter, revoke, or repeal a grant of special privilege necessarily implies that the power can be exerted at the pleasure of the legislature."

See, also, Greenwood vs. Freight Company, 105 U. S. 13.

Spring Valley Water Works vs. Schottler et al., 110 U. S. 347.

Railroad Company vs. Maine, 96 U. S. 499.

Bridge Company vs. United States, 105 U. S. 470.

It is not necessary that there should be an act in each instance amending a charter or special law. A general law may be such as to operate as a repeal or amendment of several special laws by implication, or control the same when in conflict with the general law. "An intention to supersede local and special acts may be gathered from the design of the acts to regulate by one general system or provision the entire subject-matter

thereof and to substitute for a number of detached and varying enactments one uniform rule applicable throughout the state."

Endlich on Interpretation of Statutes, section 231, page 311, and illustrative cases and note to the same.

Mr. Morawetz, in his work on corporations, lays down the rule as to whether a general law operates as a repeal or amendment of a special law, saying: "The question is wholly a question of intention, to be ascertained as in other cases of legislative enactment," * * * "and the intent to abrogate the particular enactment in an earlier statute is sufficiently manifested where the provisions of the enactments are so inconsistent that they cannot stand together."

Morawetz on Corporations (2d Ed.) volume 2, section 1110, and authorities cited by the author.

In the case of the Union Improvement Company vs. Commonwealth 59 Pa. St. 150, an act of the legislature passed in 1863, provided that the capital stock and dividends of an improvement corporation should not be taxable. The legislature reserved the right to "alter, amend and annul the charter"

By a subsequent general act, passed in 1866, it was provided that "the capital stock of *all companies* whatever, incorporated under any law of this commonwealth (except banks, etc.) shall be subject to paying an annual tax." Held, that the act of 1862 was amended by the act of 1866, and that the corporation was

liable to taxation as provided by the last-mentioned act, and in the language of the court "the intention of the legislature was too plain to admit of any doubt as to the meaning."

In the case of Bangor, Oldtown & Milford Railway Company vs. Smith, 47 Me. 35, the plaintiff railroad company was granted a charter by the legislature, giving it the right to construct its road over streets and street crossings, but the charter was subject to the reserve power of alteration, amendment or repeal. Subsequently a general act was passed regulating the mode and manner in which railroad companies could construct and operate their railroads at street crossings.

The court held that this general law was an amendment of the special charter of the railroad company in this particular, and approved of the rule upon this point laid down by the supreme court of Massachusetts in the case of Roxberry vs. Providence R. R. Co., 6 Cush. 431: "That an act, general in its terms and applicable to all railroads in the commonwealth, and in terms specifically applicable to the case in question, is warranted by the general act giving the legislature power to modify acts of incorporation, and that the legislature may thus modify or alter such charters." (Page 49.)

In the State of Minnesota the same rule is recognized.

Prince vs. City of St. Paul, 19 Minn. 267.

State vs. Klein, 22 Minn. 329, directly in point.

Some of the cases show an express reservation to *repeal* as well as to alter or amend. The power to *repeal* has been generally construed as equivalent to the power to revoke or abrogate, whereby the legislature may utterly extinguish or annul the charter containing such a reservation.

Hamilton Gas Light & Coke Company vs. City of Hamilton, 146 U. S. 270.

Greenwood vs. Freight Company, 105 U. S. 21.

Railroad Company vs. Maine, 96 U. S. 499.

In the present case, the legislation of 1874 and 1881 referred to did not attempt to *repeal* the act of incorporation or to prevent the defendant from constructing or operating railroads. It did restrain, qualify or regulate the power to consolidate and make similar arrangements with other companies so as to prevent monopolies. It may be assumed, therefore, by the plaintiff that the power to amend reserved in said section 17 did not include the power to repeal or revoke the charter itself, or to make such a radical change in the same as would destroy the identity of the general object of this company; that is to say (by way of illustration), to change it from a railroad corporation to a manufacturing corporation, or a mercantile or mining corporation. It did, however, include any substantial change or alteration which would ordinarily be affected by amendatory acts, or which the legislature might make affecting any railroad corporation, such as cur-

tailing its line or branches, or restraining, qualifying, or regulating the power to consolidate.

Mayor of Worcester vs. Norwich & Worcester Ry. Co. 109 Mass. 103.

The terms amend or alter are synonymous or convertible terms. Statutes making changes in existing statutes are in common practice classified as "Amendatory Acts," and such an act is almost invariably entitled "An act to amend," etc.; that is to say, to alter or modify the original act. In some of the states there are special constitutional provisions or regulations of "Amendatory Statutes," so called, which have been applied to the revision or alteration in the existing law.

Sutherland on Statutory Construction, chapter 7, "Amendatory Acts," section 131, and authorities cited in note to same.

An amendment may and generally does operate to repeal at least constructively, all of the section or part amended, not embraced in the amended form.

Id., section 133, and authorities in note to same, page 171.

It is common practice to amend a section or part of a statute by a substitute set forth in the amended act; as, by way of illustration, "Section one is hereby amended so as to read as follows" (the substitute or amended section following), and this practice is required in some of the state constitutions before noticed.

In such a case the amendment repeals by implication that part of the old section not embraced in the new one.

Id., section 131, page 17.

Justice Miller in his opinion in the case of Greenwood vs. Freight Company, 105 U. S. 13, commenting on the reserve power in a preceding general law in Massachusetts, which it was claimed affected the charter of the defendant corporation in that case, viz.: "Every act of incorporation passed after the eleventh day of March, 1831, shall be subject to *amendment*, alteration, or repeal at the pleasure of the legislature." (Page 17.)

"Such an act," says Justice Miller, "may be *amended;* that is to say, be changed—by adding to its terms or by qualification of the same;" which he designates a "milder form" than a repeal.

So in the case of Gardner vs. Hope Insurance Company, 9 R. I. 104, the question was the construction and affect upon the charter of the defendant company of an express law of that state, which provided that "all acts of incorporation hereafter granted may be *amended* or repealed at the will of the general assembly, unless express provision be made therefor to the contrary." (Id., 198.)

The original charter of the defendant in that case provided for a limited stockholders' liability. Subsequestly the legislature passed another act increasing the liability of stockholders, which subjected them to assessments

which they would not have incurred under their charter. For this reason, it was claimed by the defendant that the last-mentioned act was unconstitutional, as interfering with vested rights of the said company and impairing the obligation of contracts.

The supreme court of Rhode Island, in construing this statute, says: "The legislature has reserved the power at any time to *alter* or repeal the charter of any of its provisions; the corporation accepted it upon this condition, and agreed that any provision *might be changed.*" (Id., page 199.)

The court uses the term *alter* as synonymous with the word amend, the latter being the word used in the act in question.

The court upheld the statute upon the reserve power to *amend*, not to repeal, as there was no attempt of the legislature to repeal the charter. The court says of this power to "*amend*," that there is no limit to the power expressed in the act in terms. (Page 200.)

There are but few amendmets which do not have the effect of repeal, at least constructively, of some part of the old law, inconsistent with the new, and it is an ordinary incident of an amendment, whereas the reserve power to repeal is intended to authorize a revocation of the entire charter and extinguish the corporation itself. (Greenwood vs. Freight Company, supra, page 17.)

Justice Miller, in the case of Greenwood vs. Freight Company, supra, gives a history of these prevalent reservation of power in acts of the legislature, as fol-

lows: "A short reference to the origin of this reservation of the right to repeal charters of corporations may be of service in enabling us to decide upon its office and effect when called into operation by the legislative exercise of the power.

"As early as 1806, in the case of Wales vs. Stetson, 2 Mass. 143, the supreme court of that state made the declaration 'that the rights legally vested in all corporations cannot be controlled or destroyed by any subsequent statute, unless a power for that purpose be reserved to the legislature in the act of incorporation.' In Trustees of Dartmouth College vs. Woodward, 4 Wheat. 518, decided in 1819, this court announced principles on the subject of protection that the charters of private corporations were entitled to claim, under the clause of the Federal Constitution, against impairing the obligations of contracts, which, though received at the time with some dissatisfaction, have never been overruled in this court. The opinion in that case carried the protection of the constitutional provision somewhat in advance of what had been decided in Fletcher vs. Peck, 6 Cranch, 87, and the preceding cases, and held that it applied, not only to contracts between individuals and to grants of property made by the state to individuals or corporations, but that the rights or franchises conferred upon private as distinguished from public corporations by the legislative acts under which their existence was authorized, and the right to exercise the functions conferred upon them by the statute were, when accepted by the corporations, contracts which the state could not impair.

"It became obvious at once that many acts of incorporation which had been passed as laws of a public character, partaking in no general sense of a bargain between the states and the corporations which they created, but which yet conferred private rights, were no longer subject to amendment, alteration, or repeal except by the consent of the corporate body, and that the general control which the legislatures creating such bodies had previously supposed they had the right to exercise no longer existed. It was, no doubt, with a view to suggest a method by which the state legis-

latures could retain in a large measure this important power without violating the provisions of the Federal Constitution that Mr. Justice Story, in his concurring opinion in the Dartmouth College case, suggested, that, when the legislature was enacting a charter for a corporation, a provision in the statute reserving to the legislature the right to amend or repeal it must be held to be a part of the contract itself, and the subsequent exercise of the right would be in accordance with the contract, and could not, therefore, impair its obligation." And he cites with approval the observations we have already quoted from the case of Wales vs. Stetson, 2 Mass. 143.

"It would seem that the states were not slow to avail themselves of this suggestion, for while we have not time to examine their legislation for the result, we have in one of the cases cited to us as to the effect of a repeal (McLaren vs. Pennington, 1 Paige (N. Y.) 102), in which the legislature of New Jersey, when chartering a bank with a capital of $400,000 in 1824, declared by its seventeenth section that it should be lawful for the legislature at any time to alter, amend, and repeal the same. And Kent (2 Com. 307), speaking of what is proper in such a clause, cites, as an example, a charter by the New York legislature, of the date of Feb. 25, 1822. How long the legislature of Massachusetts continued to rely on a special reservation of this power in each charter as it was granted it is unnecessary to inquire, for in 1831 it enacted as a law of general application that all charters of corporations thereafter granted should be subject to amendment, alteration, and repeal at the pleasure of the legislature, and such has been the law ever since." (Pages 19-21.)

The object of such reservation was to remove the restriction or impediment upon the legislature imposed upon it by the doctrine of the Dartmouth College case, so as to deal with such special acts or charters as it might with general or ordinary legislation; and, therefore, when this restriction or impediment is removed from a charter, a subsequent act of legislature, whatever may be its form, which is conflicting with the

charter, will control the latter, and where such act does not in terms purport to amend a charter or special act in question, it nevertheless controls the latter, and may be and generally is considered as a constructive amendment.

Judge Sanborn, in his opinion, considers the acts of 1874 and 1881 in question broad enough to reach the case, and evidence that the reserve power to amend would be sufficient warrant to the legislature in the passage of such statutes, and that they would apply effectively to the charter of defendant, but for the clause in section 17 in the charter or act of 1856, viz., "in any manner not destroying or impairing the vested rights of said corporation," which in his judgment turns the scale in favor of defendant..

Upon this very important point the attention of the court is next directed:

CONSTRUCTION OF SECTION 17.

"This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly in any manner not destroying or impairing the vested rights of said corporation." (Section 17.)

What did the legislature intend by this reservation? The plaintiff claims that the main purpose of the legislature was to reserve a power in the future which it would not have without the reservation, and that it was not intended to limit this reservation to trivial matters of form or matters of police or remedial legislation, which were within the power of the legislature without any such reservation. The position of the de-

fendant seems to be that the clause referred to prevented the legislature from interfering with any such rights which would be vested in the defendant corporation by acceptance of its charter to the same extent as if section 17 or the said reserve power had been omitted. So that, if the defendant's position is correct, section 17 is entirely inoperative and ineffectual, and the right of the parties, either the state or the corporation, are precisely the same without it as they are with it.

The plaintiff claims that effect must be given to what was the manifest intention of the legislature to reserve in future the power to amend the charter.

Defendant's counsel appear to rely upon the term *vested rights*, in the clause in section 17, which they interpret to mean all of the corporate powers expressed in the charter, and that they vested *in presenti* in the defendant on and by acceptance, and thence became irrevocable franchises unaffected by section 17.

This interpretation of the said term vested rights is rather an *assumption* than an argument, and there has been no reliable showing to support such an assumption. The term vested rights is not explicit as to *what rights* are intended thereby and does not *per se* denote the alleged franchises of the company. The term *franchises*, or ordinary appellation of such rights as defendant claims, is not used, and the omission has considerable significance. Although franchises may be vested rights, yet the term vested rights does not necessarily denote franchises, but may be other rights than

franchises. It is not pretended that the defendant might not acquire vested rights which are not franchises, such as rights in and to property and contracts obtained by the company under its charter powers. Defendant's counsel call such vested rights last mentioned derivative rights, but they are not the less vested rights for this reason and are certainly covered by the term vested rights. The right to be a corporation is also probably a vested right as well as franchise, as there was no expressed reserve power to repeal the act of incorporation.

If the said clause referred to vested rights in acquired property, or in contracts, or in the right to be a corporation, the reserve power to amend would be unmistakably effectual.

Defendant's counsel say in substance, however, arguendo, that inasmuch as the vested rights in property acquired by the corporation would be sufficiently secure from interference of the legislature that the clause in question was unnecessary for that purpose, and therefore must apply to the other rights or franchises of the corporation. This position is answered by the stronger argument that such a construction would render nugatory and ineffectual the main purpose of the legislature as manifested in the other part of the said section and the further argument *that such a construction would render the whole of section* 17 *nugatory and void to the same extent as if it were not inserted in the act at all*, beeause it would be useless to the defendant,

whose rights would be as well secured without as with it, and it would be as useless to the plaintiff for the reason that the latter would have all the power without it which it could have with it. So that the argument of the defense is at least neutralized by an argument in kind of the plaintiff.

A recurrence, however, to common practice in legislative acts will show that the assumed test which the defendant applies to the point is without foundation. The legislature frequently introduces in acts a saving, as a declaimer of interference with rights which would be secure without such saving. This course is quite frequent in curative acts in saving the rights which have already vested, or which litigants might be entitled to in pending litigation, and also in other legislation as a matter of caution.

THE SETTLED CANONS OF CONSTRUCTION OF SUCH STATUTES ARE CLEARLY AGAINST THE DEFENDANT.

1. GENERAL RULE.

"When the words are not explicit the intention is to be collected from the context, from the occasion and necessity of the law, from the mischief felt, and the object and the remedy in view; and the intention is to be taken or presumed according to what is consonant in reason and good discretion."

Kent's Commentaries, volume 1, page 462.

Plowd., page 206.

Whitney vs. Whitney, 14 Mass. 92.

Gibbons vs. Ogden, 9 Wheat. 189.

Section 17 is entirely clear as to its object, except so far as it is questioned by the defendant in the construction it gives to the clause relative to "vested rights," and upon the meaning of this term "vested rights" counsel differ, and different interpretations are claimed for it by respective counsel.

It seems evident to plaintiff's counsel that this section, taken as a whole, intends to reserve to the legislature a power in the future to amend the charter, etc.

The occasion, however, which gave rise to it clearly corroborates this view. It was one of the acts of the same character and nature, and in keeping with a mass of legislation throughout all the states, which was intended to remove the impediment in amending charters and acts of that character, created by the Dartmouth College Case, and following the suggestion of Judge Story in his concurrent opinion, in that case.

The extracts from Justice Miller's opinion, in the case of Greenwood vs. Freight Company, 105 U. S. 19, give a history by that eminent judge of similar legislation, its object, and its prevalence, and it is fair to presume that the legislature of this state was actuated by the same reasons and influenced by the same object as the other states with respect to this matter.

Aside from this there were several railroad charters created during the same session of the legislature of Minnesota in 1856, most of them on the same day, or within a day or two, of the passage and approval of the act in question.

They were the following:

"An act to incorporate the Lake Superior and Central Railroad Company," chapter 158 of laws of Minnesota of 1856, approved March 1, 1856, page 280. Limited to fifty years. No reservation.

"An act to incorporate the Winona and La Crosse Railroad Company," approved Feb. 26, 1856, Id., chapter 159, page 287.

Section 16 being as follows: "This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly in any manner not destroying or impairing the vested rights of said corporation."

"An act to incorporate the Minneapolis & St. Cloud Railway Company," being the act in question, chapter 160, page 294.

"An act to incorporate the Lake Superior and Northern Pacific Railroad Company," chapter 158, page 301, approved March 1, 1856.

Section 15 being as follows: "This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly in any manner not destroying or impairing the vested rights of said corporation."

"An act to incorporate the Mississippi & Missouri Railroad Company, Id., chapter 168, page 308, approved March 1, 1856.

Section 15 being as follows: "This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly in any manner not destroying or impairing the vested rights of said corporation."

"An act to incorporate the Northern Pacific Railroad Company," Id., chapter 165, page 318, approved March 1, 1856. Duration limited to fifty years. No reservation.

"An act to incorporate the Minnesota & Cedar Valley Railroad Company," Id., chapter 166, page 325, approved March 1, 1856.

Section 17 reads as follows: "This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly in any manner not

destroying or impairing the vested rights of said corporation, and shall be favorably considered in all legal and equitable proceedings for the accomplishment of the object intended."

It will be noticed that two of the charters of these railroad companies did not have such a reservation, but that their duration was limited to fifty years, which is very significant, showing that the legislature, with respect to those charters which were perpetual, was not willing to invest them with franchises in their charters unless subjected to the future power of amendment by the legislature.

It also shows that there was a prevalent sentiment in the session of 1856 of the legislature of Minnesota, that there should be a check or a limit imposed upon charters of railroad companies; and, of course, it is presumable that this check was intended to be an efficacious power in the hands of the legislature similar to that which the legislature had reserved to itself in other states in similar cases.

It is noticeable, also, that the two charters which are limited to fifty years duration are not made "public acts;" but the perpetual charters before mentioned were each declared to be "public acts."

Justice Miller, in his opinion in the case of Greenwood vs. Freight Company, before referred to, shows that the idea of the legislature, in making such a reservation, was that such charters or special acts should be treated in the same manner as public acts; that is, subject to the power of amendment or repeal, ac-

cording to the reservation of the legislature. Or, in other words, that the legislature should be as free to amend, or repeal, as the case may be, such charters or special acts as they would have been without the restriction imposed by the doctrine of the Dartmouth College Case, and that the term "public act," in connection with this reservation in the charter referred to, has a significance which aids in the interpretation of the statutes, showing that it was not intended merely to allow such act to be considered without being specially pleaded, as in the case of a general law, but that it was intended by the legislature that the charter should be treated as a public act with respect to the power of the legislature to amend, etc., and for that reason that the two charters which are limited to fifty years and do not need any such reservation were not declared to be public acts.

2. WHERE THERE IS A QUALIFICATION OR SAVING REPUGNANT TO THE PURVIEW OR BODY OF THE ACT.

"A saving clause in a statute is to be rejected when it is directly repugnant to the purview or body of the act and could not stand without rendering the act inconsistent and destructive of itself."

Blackstone Commentaries, 1st Vol. * page 89.

Kent's Commentaries, 1st Vol. * pages 462, 463.

Sutherland on Statutory Construction, sections 221, 228.

Walsingham's Case, 2 Plowd. 575.

The Alton Woods Case, 1 Coke, 40a, 47a.

Milford vs. Elliott, 8 Taunt. 13, 18, in connection with the judgment of that court.

Lord Coke, in the Alton Woods Case, before cited, says: "If it be recited by an act of parliment, that, whereas J. S. is seized of certain land in fee, this land by said act is given to the king in fee, saving the estate, right, etc., of all persons, the estate of J. S. is not saved thereby, for that would be repugnant and make the express gift void."

"For if the saving as to the owner of land, inasmuch as the manor is by express name given to the king, for if the general saving shall extend to the owner of land, then the act would be made in vain." (Page 47a.)

The words in section 17, "not in any manner destroying or impairing the vested rights of the corporation," should be rejected as repugnant to the purview of said section, for if given the effect (according to the construction of the defendant) they would destroy the power particularly reserved.

(if given the effect claimed by defendant)

A similar qualification of the reserve power is found in the constitution of Pennsylvania, which provided that the legislature should have power "to alter, revoke, or amend any charter of incorporation, * * * *in such manner, however, that no injustice shall be done to the incorporators.*"

This qualification came in question in the supreme court of that state, and afterwards in the supreme court of the United States, by appeal therefrom, in the case of Railway Company vs. Philadelphia, 101 U. S. 528.

The point was the constitutionality of an act of the legislature of the State of Pennsylvania, by which the license fee of thirty dollars on each railway car of the company fixed by the charter of the company was afterwards increased by an act of the legislature to fifty dollars on each car. The railway company claiming that this increase in the license above the amount specified in the charter was a violation of its vested rights, notwithstanding the reservation in the state constitution, and raising the question as to the effect of the qualification of that clause that the power to amend should be exercised, *in such manner, however, that no injustice should be done to the incorporators.*"

The court said "vested rights, it is conceded, cannot be impaired under such a reserve power; but it is clear that the power may be exercised to almost any extent to carry into effect the original purpose of the grant and to protect the rights of the public and of the corporators, or to promote the due administration of the affairs of the corporation."

"Tested by these considerations, it is clear, even if it be admitted that the charter is sufficient to impair the contract, that the power of the legislature under the constitution is amply sufficient to justify that department of the state to pass the act raising the license of each car from thirty to fifty dollars." (Page 540.)

See, also, Pennsylvania College Case, 13 Wallace, 190, calling in question the same reservation.

The qualification of the power of the legislature of Pennsylvania in exercising the reserve power in question, was substantially similar to the present case.

The language, that the power should be exercised "*in such manner that no injustice should be done to the incor-*

porators," is of the same nature as the reservation in section 17, "in such manner as not to destroy or impair the vested rights of the corporation."

Effect should be given to the manifest object of reserving the power of amendment to the legislature of Minnesota, as it was given in the cases before mentioned in Pennsylvania and under like circumstances.

It will be found that the charter of the Northern Pacific contains a reservation of the same nature as that of the constitution of Pennsylvania, and in the charter of the defendant, viz.: "Congress may at any time, having due regard for the rights of said Northern Pacific Railroad Company, add to, alter or repeal this act."

Printed record, page 69.

The statute should be construed so as to carry out its general object and intent.

Sutherland on Statutory Construction, section 218.

The general object and intent of section 17 was undoubtedly to reserve to the legislature a power of amendment in the future which it would have been prevented from exercising by reason of the doctrine in the Dartmouth College Case.

3. THE RULE AFFECTING A CHARTER AS A GRANT FROM THE STATE.

A grant by the legislature is to be construed in favor of the government upon the ground of public policy.

"Whether the grant be of property, franchises or privileges, it is construed in favor of the public, nothing passes but what is granted in clear and explicit terms."

"It is therefore never implied that it [the state] has surrendered, in whole or in part, any of its sovereign power of legislation for the general welfare."

Section 378 of Sutherland on Statutory Construction.

"It is not for us to wrest so guarded a power [power to amend or repeal] from the legislature by construction, unless the legislature and the people have made such a construction inevitable."

"We shall assume that it is a power of great significance and gravity, of such moment that it is impossible to believe that the legislature and the people intended to surrender or impair; very hard to believe that they suffered themselves to surrender or impair it, by implication, in an amendment designed for quite a different purpose, quite consistent with the reserve power."

Opinion of Chief Justice Ryan in the case of Attorney General vs. Railroad Companies, 35 Wis. 559.

"First, that, in a grant like this, designed by the sovereign power, making it to be a general benefit and accommodation to the public, the rule is, that, if the meaning of the words be doubtful, they shall be taken most strongly against the grantee and for the government; and therefore should not be extended by implication in favor of the grantee beyond the natural and obvious meaning of the words employed. If these do not support the right claimed, it must fall."

Mills vs. St. Claire Co., 8 How. 581.

"The rule of construction in this class of cases is, that it shall be most strongly against the corporation. Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceded but what is given in unmistakable terms or by an implication equally clear. *The affirmative must be shown. Silence is ne*

gation and doubt is fatal to the claim. This doctrine is vital to the public welfare. It is axiomatic in the jurisprudence of this country."

Fertilizing Co. vs. Hyde Park, 97 U. S. 666.

"But conceding, for the purposes of this opinion, that there is here a contract, as claimed by the plaintiffs in error, then the question arises, what is the contract? or, in other words, to what does it bind the state?"

"The rules of interpretation touching such contracts are well settled in this court. In Tucker vs. Ferguson, 22 Wall. 527, we said: 'But the contract must be shown to exist. There is no presumption in its favor. Every reasonable doubt should be resolved against it. Where it exists, it is to be rigidly scrutinized, and never permited to extend either in scope or duration beyond what the terms of the concession clearly require.' *There must have been a deliberate intention clearly manifested on the part of the state to grant what is claimed. Such a purpose cannot be inferred from equivocal language.*

"It is equally well settled that contracts made by the state with individuals, in granting charters, are not to be construed by the same rules as contracts between individuals. *In the latter, the rule of the common law, which is the same as common sense, is 'words are to be taken in the strongest sense against the party using them,' on the idea that self-interest induces a man to select words most favorable for himself. It is otherwise when the state is a party; for it is known that in obtaining charters; although the sovereign is presumed to use the words, in point of fact the bills are drafted by individuals seeking to procure the grant, and that the 'promoters,' as they are styled in England, or the 'lobby members,' as they are styled on this side of the Atlantic, have the charters of acts of incorporation drafted to suit their owners' purposes; and a matter of this kind, instead of being, in its strict sense, a contract, is more like the act of an indulgent head of a family dispensing favors to its different members and yielding to importunity.*"

Newton vs. Commissioner, 100 U. S. 561.

"The civil law inclines to consider grants made by the sovereign with a favorable eye and to give them an enlarged and liberal interpretation; the common law, however, in obedience to its instinctive sympathy

with equal rights and its jealousy of prerogatives, has always adopted a widely different and much sounder rule. Uniform language of the English and American law is, that all grants or privileges are to be liberally construed in favor of the public and as against the grantees of the monopoly, franchise, or charter, to be strictly interpreted. Whatever is not unequivocally granted in such acts is taken to have been withheld; all acts of incorporation, and acts sustaining the privileges of incorporated bodies are to be taken most strongly against the companies."

The Raleigh & G. Rd. Co. vs. Reid, 64 N. C. 165.

See, also, St. Charles River Bridge vs. The Warren Bridge, 8 How. 581.

Richmond Rd. Co. vs. Louis Rd. Co., 13 Id. 81.

Dubuque & Pacific R. R. Co. vs. Litchfield, 23 How. 88.

Holyoke Co. vs. Lyman, 15 Wall. 512.

Railway Co. vs. Philadelphia, 101 U. S. 539.

Missionary Society vs. Dalles, 107 U. S. 342.

Slidell vs. Grandjean, 111 U. S. 437.

Central Trans. Co. vs. Pullman, 139 U. S. 49.

State vs. Vanderbilt, 37 Ohio St. 641.

In some instances the question of the discretion of the legislature to alter or amend has been considered *in some of the cases*, and the doctrine seems to be conceded in these decisions that the exercise of the discretion of the legislature in such case must be presumed to be in good faith, and upon due consideration of the facts, and the question of the propriety or reasonableness of the amendment to a charter is not a judicial question, but is to be determined by the legislature itself.

Upon this point we give the following extracts from the case of Hamilton Gas Light & Coke Company vs. The City of Hamilton, 146 U. S. 258, before cited:

"A legislative grant to a corporation of special privileges, if not affected by the constitution, makes a contract, but where one of the conditions of the grant is that the legislature may alter or revoke it, a law altering or revoking, or which has the effect to alter or revoke the exclusive character of such privileges, cannot be regarded as one impairing the obligation of the contract, whatever may be the motive of the legislature, or however harshly the legislation may operate, in the particular case, upon the corporation or the party affected by it.

"The general reservation to alter, revoke, or repeal a grant of special privileges *necessarily implies that the power may be exerted at the pleasure of the legislature.* (See page ——.)

"The reservation (alter, amend, or repeal) affects the entire relation between the state and the corporation, *and places under legislative control all rights, privileges, and immunities derived by its charter directly from the state.*"

Tomlinson vs. Jessop, 15 Wall. 459.

"We think it must be conceded, that, according to the unvarying decisions of this court, the unconditional repeal of the charter of the Marginal Company is void under the constitution of the United States as impairing the obligation of contracts, made by acceptance of the charter between the corporators of that company and the state, unless it was made valid by the general provision of the General Statutes of Massachusetts, or unless it falls within some enactment covered by that part of its own charter which makes it subject to all the duties, restrictions, and liabilities set forth in the general law which now are or may hereafter be in force relating to said railroad corporations, so far as they may be applicable. The first of these reservations of legislative power over corporations is found in section 41 of chapter 68 of the General Statutes of Massachusetts in the following language: 'Every act of incorporation passed after the

eleventh day of March, 1831, shall be subject to amendment, alteration, or repeal at the pleasure of the legislature.

"Such an act may be amended—that is to say, it may be changed—by adding to its terms, or by qualification of the same. It may be altered by the same power, and it may be repealed. What is it that may be repealed? It is the act of incorporation. It is this organic law on which the corporate existence of the company depends which may be repealed, so that it shall cease to be a law; or the legislature may adopt the milder course of amending the law in matters which need amendment, or altering it when it needs substantial change. All this may be done at the pleasure of the legislature. That body need give no reason for its action in the matter.

Greenwood vs. Freight Company, 105 U. S. 13, 17.

"This restriction [to repeal, alter or amend] is imposed upon the legislative will, and the corporators confided in the wisdom and justice of the legislature not to exercise the power unless the facts clearly authorized them to do so. This is not an unreasonable confidence, * * * but we do not believe that the inquiry into the affairs or defaults of a corporation by the legislature with a view to discontinue is a *judicial act.*"

Their decision must prima facie be presumed to be right.

Crease vs. Babcock, 23 Pick. 344, 345.

"It is difficult to put a precise limit upon the power of the legislature thus reserved over corporations created by it or under its authority. Under this reserve power it cannot deprive a corporation of its property, or interfere with or annul any contracts with third persons; but it may take away its franchise to be a corporation, *it may prescribe the conditions and terms upon which it may live and exercise such franchise, it may enlarge or limit its powers, and it may increase or limit its burdens.*"

Mayor vs. 23d Street Railway Co., 113 N. Y. 317.

"*The power of the legislature to repeal, alter, or amend a charter under a reservation of this character is not exhausted after having been once exercised, but continues in force until relinquished by a repealing act.*"

2 Marowetz on Corporations, section 1112.

State vs. Commissioners of R. R. Tax, 37 N. J. Law, 228.

New Jersey vs. Yard (same case as last cited), 95 U. S. 104.

Proprietors of Side Booms vs. Haskell, 7 Me. 474.

The case of New Jersey vs. Yard, 95 U. S. 104, was claimed by the defense to be an authority to the effect that such a reservation was exhausted after one amendatory act was passed.

That case turned upon the question whether the legislature had, by a subsequent act, *intended* to make a new contract, superseding the old contract or charter, which contained a reservation allowing future amendments.

The case turned entirely upon the intention of the legislature as to the effect of such subsequent act.

The Morris & Essex Railroad Company was incorporated under an act of the legislature of the State of New Jersey, Jan. 29, 1835. The twentieth section reserved to the legislature the right to alter, amend, or repeal the act.

By an act *supplemental* to the original act certain additional powers were given and *section* 20 *was repealed.*

This supplement reserved the right to alter or amend the supplement or the act to which it was a supplement, "whenever the public good may require it."

On the 14th of February, 1846, a general act relating to corporations was passed, providing "that the charter

of every corporation which *shall thereafter be granted* by the legislature shall be subject to alteration, suspension, and repeal in the discretion of the legislature."

On March 28, 1862, a general tax law was passed, which provided for taxing private corporations, and containing a repealing clause of the original act or parts of acts special or otherwise inconsistent with the provisions of the act.

The original charter of this company provided, that, as soon as the net proceeds of the road paid seven per cent on its cost, the company should pay annually a tax of one-half of one per cent on its cost in lieu of other taxes.

Another supplement passed on the 23d of March, 1865, which, after conferring certain powers, provided by section 3 that the tax of one-half of one per cent provided by the original act should be paid at the expiration of one year from the time when the road of the company shall be open and for use to Phillipsburgh, and annually thereafter; provided, the section should not go into effect nor be binding on the company until it, *by an instrument duly executed under its corporate seal shall have signified its assent hereto.*" Said acceptance to be given within sixty days after the passage of the act or the act to be void.

The company executed and filed the required instrument in due time.

On the 5th of March, 1867, another supplement was passed, which provided in effect that no other tax should be paid by the company except the last-men-

tioned tax, and no formal acceptance was required or given. On April 2, 1873, a general law was passed applicable to all railroad companies and taxing the same, which substantially changed and increased the tax previously settled upon and agreed to by the company by the act of March 23, 1865, and confirmed by the act of March 5, 1867. The company resisted, on the ground that the tax had been settled by contract, *made for a valuable consideration*, between the state and itself.

The case went to the supreme court of New Jersey, where the company was defeated, and was brought by writ of error to the supreme court of the United States.

Justice Miller delivered the opinion of the latter court. After referring to the said legislation of New Jersey, down to and including the act of 1867, which enacted without reserve that "no tax by or under the authority of the state shall be imposed upon any property of the company except the tax of one-half of one per cent on the cost of its road, which by said charter and the supplement thereto, approved on the twenty-third day of March, 1865, was required to be paid by said company in lieu of all *other taxes, any act to the contrary notwithstanding*," the learned justice says that it was competent for the legislature of New Jersey to grant or amend a charter containing such a reservation, declaring in the act that it should not be subject to alteration or repeal. (Page 111.)

"It follows, that, unlike the constitutional provisions in other states, it is in New Jersey a question, in every

case of a contract made by the legislature, whether that body intended that the right to change or repeal it should inhere in it, or whether, like other contracts, it was perfect and not within the power of the legislature to impair its obligation." (Id., 112.)

Justice Miller then expresses the opinion of the supreme court, that the act of 1865, and written acceptance required by that act and given by the company, *was intended* to be a binding contract between the state and company, disposing of this question of taxing the property of the company.

"The legislature said, if you will consent to pay the one-half of one per cent tax as originally agreed, and commence to do this within one year from the time the road shall be open and in use to Phillipsburgh, we will authorize an increase of ten millions of your capital stock, and the franchise you seek as to branch roads, and will agree that the tax shall be fixed at one-half of one per cent. *Here was a subject of disagreement adjusted*, additional rights granted, and the tax fixed, both as to its rate and the time of its commencement.

"Can it be believed that it was intended by either party to this contract, *that, after it was signed by both parties one was bound for ever and the other only for a day?*"

The decision, as will be found, recognizes the doctrine, that the right of exercising this reserve power is not exhausted by a single subsequent act, but that it is a continuing power, unless it appears that the subsequent act was intended to have the contrary effect.

So it was held by the supreme court of Maine, that the "proviso in the private act of March 5, 1805, incorporating the proprietors of side booms in the Androscoggin river with the right to tolls," and in the additional act of Feb. 29, 1812, "that the fees aforesaid shall at all times hereafter be subject to revision and

alteration by the legislature," is not satisfied by a single act, reserving the right to increase or reduce the fee from time to time at the pleasure of the legislature.

Proprietors of Side Booms in Androscoggin River vs. Haskell, 7 Maine, 474.

In the case of New Jersey vs. Yard, supra, it was decided that any subsequent legislature had the right to repeal this reservation, which it seemed to have done in that case, and whether it made a subsequent irrevocable contract with the railroad was a question of the intention of the legislature.

In the present case there is nothing in the subsequent amendments of the charter of the defendant to indicate any repeal of this reservation in the original act, much less to make a subsequent irrevocable contract with the defendant.

The first amendment, Feb. 23, 1864, provided that the said original act is hereby declared to be in full force and effect, except so far as the same is repealed or modified by this act.

The next act, of Feb. 11, 1865, was not an amendment but a grant to the company of certain swamp lands.

The act of Feb. 28, 1865, amended certain specified sections or parts of original act and the amendatory act of 1864, leaving intact and unrepealed section 17 of the act of 1856 in question. None of the subsequent amendments have any reference to section 17, nor apparently any design to affect it.

The fact that the act or charter of 1856 was repeatedly amended by the legislature goes also to show that the legislature exercised its power under the reservation in said section 17.

III.

THE LEGISLATION OF MINNESOTA OF 1874 AND 1881, BEFORE REFERRED TO, IS APPLICABLE TO AND CONTROLS THE CHARTER OF THE DEFENDANT (WITHOUT THE RESERVATION IN SECTION 17).

See specifications of error, Nos. 4 and 7.

The legislature in such a case has the power to regulate and restrain the defendant with respect to the matter in question. The proposed arrangement is not in terms authorized by the charter of the defendant and amendments thereto, nor by the charter of the Northern Pacific Railroad Company.

See specifications of error, No. 6.

Section 5 of the charter of the Northern Pacific Railroad Company of 1864 provides as follows: "It shall be the duty of the Northern Pacific Railroad Company to permit any other railroad, which shall be authorized to be built by the United States or by the legislature of any territory or state in which the same may be situated, to form running connections with it on fair and equitable terms."

This provision evidently was intended for a case in which the lines of other railroads might be so situated physically with respect to the tracks of the Northern Pacific Railroad Company that it might be mutually advantageous to make such running connections. But

an arrangement of this kind, it is evident, would not in the least interfere with or effect the independent and competitive character of either company.

The same may be said, as already noticed, of the act of 1870, before referred to, passed by the legislature of Minnesota, in which the Northern Pacific Railroad Company is authorized to make similar running connections to a certain extent. There is nothing else in the charter of the Northern Pacific Railroad Company, which bears upon the point.

Neither this section, nor any other part of the charter of the Northern Pacific Railroad Company, authorized it to surrender any controlling interest of its stock or to carry out such an arrangement as the one in question, which would destoy, at least, if not its identity, its independent and competitive character and position, contrary to the legislation of 1874 and 1881, and the general public policy of the state.

The position of the defendant in this regard is, that, inasmuch as its charter contains the power to consolidate with any other railroad company, or to make arrangements in the nature of such consolidation, it is authorized to make the proposed arrangement in question, upon the ground that the greater includes the less, and Judge Sanborn has affirmed this position in his opinion.

He says: "This unrestricted right to consolidate with any other railroad corporation includes the power to buy and destroy the stock of that corporation and to

pay for it by the issue to its shareholders of stock of the defendant. It includes this power because a consolidation may be legally effected in this way." Marowetz on Corp., section 642.

"If the defendant may buy all of the stock of the corporation, it may buy one-half of it. If it may pay for such stock by the issue of its own stock, it may do so by the payment of money or by an absolute or conditional promise to pay money for it."

"The agreement in question contemplates the purchase of one-half of the stock of the new corporation and paying for it by the conditional promise to pay a certain amount of the debts of that corporation if the latter fails to do so. *The whole is greater than and includes all its parts.* In like manner, the right to consolidate with the corporation includes the right to purchase a part or all of its stock for the use of the shareholders of the company and the right to pay for it by the guaranty of the payment of its bonds. There is no escape from the effect of this provision, on the ground that defendant does not intend to completely consolidate with the new corporation, and hence that it has no authority to exercise the power which it might exercise if it had that intention; nor on the ground that the new corporation (the reorganized corporation of the Northern Pacific Railroad Company), a part of the stock of which is to be purchased, is yet to be incorporated.

"The right granted to the defendant was to consolidate with any railroad corporation, and it was not lim-

ited by the time, or the parties by whom, the latter was or should be organized."

So that, upon the theory of the defendant and in the judgment of the circuit court, the right or power to make the proposed arrangement was based upon the right or power of defendant to consolidate, and the argument of plaintiff is therefore properly directed to the question of consolidation and the right of the legislature to restrain or regulate it by statute.

The defendant as a common carrier and railroad corporation, exercises public functions, and to that extent is a public agent.

1. *In its privilege of exercising the right of eminent domain, it exercises the power of the state, and this power is subject at least to the supervision and regulation of the legislature.*

Long's Appeal, 87 Pa. 114.

Tracy vs. Elizabethtown & Lexington & Big Sandy Ry., 85 Ky. 270.

2. *A railroad is a species of highway.*

Alcott vs. Supervisors, 16 Wall. 678.

Raliway Commissioners vs. Portland & Oxford Cent. Ry. Co., 63 Me. 269.

In the case last cited, the railroad commissioners of the State of Maine located a certain station under the statute of that state, and it was decided by the supreme court of Maine that this action was justified, "as a regulation of the public use of railroads." Pages 270-275.

"The public character of railroads further applies from the authority granted to them to exercise the right of eminent domain." (Id., 276.)

3. *As a common carrier the defendant exercises an employment of a public character.*

Upon this basis the legislation, in the different states, establishing railroad commissioners to revise their charges and prevent discrimination, etc., depends.

See Stone et al. R. R. Commissioners vs. Yazoo & Miss. Ry. Co. (and the opinion of Judge Campbell of the Supreme Court of Mississippi) 62 Miss. 607.

The right of the legislature to reasonably limit the charges of such companies and also to prevent discrimination is now well settled in practice as well as by the highest authority.

See the cases upon this point in 94 U. S., beginning with:

Munn vs. Illinois, page 113.

Chicago, etc., Rd. Co. vs. Iowa, page 155.

Peik vs. Chicago, etc., page 164.

Chicago, etc., vs. Ackley, page 179.

Winona & St. Peter R. R. Co. vs. Blake, page 180.

Southern R. R. Co. vs. Coleman, page 181.

Ruggles vs. Illinois, 108 U. S. 526.

The creation of a corporation is a prerogative of the state or sovereign power; certainly as much as the

right of eminent domain. And the power to consolidate is substantially equivalent to the power to form a new corporation.

When such a consolidation is effected, a new corporation is produced thereby.

2 Marowetz on Corp. (2d Ed.), chapter 12, sections 939, 944.

Railroad Company vs. Georgia, 98 U. S. 359.

St. Louis Iron Mt. Ry. Co. vs. Bay, 113 U. S. 465.

By analogy to the cases where the state exercises the right to regulate and restrain the power of railroad companies as common carriers, and their roads as highways, and the right to exercise the power of eminent domain, the right to regulate and restrain the power to consolidate or form a new corporation must be accorded to the legislature, upon similar grounds and in view of similar public policy. If the legislature is warranted in enacting laws limiting the charges of common carriers, and to prevent discrimination, and of regulating the railroad as a public highway, why may the state not also regulate the combination or consolidation of several railroad corporations—a matter in which the public is as much interested as in the other respects mentioned?

In the case of Munn vs. Illinois, 94 U. S., supra, the examination of the principles upon which this legislative authority rests took a wide range, and was traced down to the common law as defined by Chief Justice Hale, two centuries ago, and Chief Justice Waite, in

that decision, says we find that when "private property is affected with the public interest it ceases to be juris privati only."

"Property does become clothed with a public interest when used in a manner to make it of public consequence and affecting the community at large. When therefore one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created." (Id., page 126.)

He goes on to state that common carriers exercise a sort of public office and have duties to perform in which the public are interested.

Citing N. J. Nav. Co. vs. Merchants Bank, 6 How. 382 (Id., page 131).

Their business is therefore "affected with the public interest" within the meaning of the doctrine which Lord Hale has so forcibly stated; and upon these general principles, which the learned chief justice enlarges, the court came to the conclusion that the legislature might regulate the charges of warehousemen (the case then under consideration).

The same argument would show that the legislature had the power to regulate this matter of consolidation or combination of the railroads. In the case of Munn vs. Illinois, supra, one of the influential questions was,

if warehousemen and common carriers were not under this restraint of the legislature, whether they might not combine and create a future monopoly, combinations of that character being repugnant to the principles of common law. The consolidation and combinations of railroads might, just as in the case of the warehousemen, lead to a monopoly, and the legislation of 1874 and 1881 was framed undoubtedly with a view to restrain and regulate the consolidation of corporations for that reason.

The provisions of the charter of the defendant of 1856, and amendments of 1865, relied on by the defendant, *are general and do not in terms exclude the authority of the state over this subject, and it is a well settled rule "that a grant to a railroad company in general terms of authority to fix the rate of compensation by its board of directors is not a renunciation of the legislative power to secure reasonable rates. Every presumption is against such renunciation."*

Stone vs. Railroad Commissioners, 62 Miss. 607, 642.

In the present instance the power to consolidate and to do acts of like character is general; it does not in terms amount to a renunciation of the legislature to regulate that subject, any more than the general power given to a board of directors of a raliroad corporation to fix the rates excludes the legislature from regulating the subject. So that, in the present case, the legislature, by reason of the public nature of the subject and the public policy involved, as well as the general char-

acter of the power conferred upon the corporation, is not precluded from a like regulation and restraint of the power to consolidate.

The legislation of 1874 and 1881 did not prohibit the defendant from consolidating and making connections with other railroads, present or prospective, but restrained them from doing so under special circumstances, where the exercise of such a power would be prejudicial to the public interest and against the settled policy of the state. This power of regulation and interference of the legislature has been sometimes described as the "police power," which is also referred to in the case of Munn vs. Illinois, and a considerable extent that power resembles the power exercised by the legislature upon the subject before mentioned.

In the present instance the legislation of 1874 and 1881 might fairly be sustained under the police power of the state, as a provision against combination and monopolies, which were unlawful at common law.

The police power, among other things, has been extended "to the *regulation of railways* and other means of public conveyance."

Lawton vs. Steele, 152 U. S. (opinion, page 136).

Under our system police power is lodged with the legislative branch of the government. It belongs to that department to exercise what is known as the police power of the state, and to determine primarily what measures are appropriate or needful for the pro-

tecting of the public morals, public health or public safety.

Mugley vs. Kansas, 123 U. S. 623.

"A monopoly is not necessarily unlawful, for it may be created or tolerated by law; but we agree with plaintiff's counsel and the cases by him cited that it is against the general policy of the law to destroy or interfere with free competition or to permit such destruction or interference."

Sanford vs. Ry. Co., 24 Pa. 378.

Hooker vs. Vanderwarker, 4 Denio, 353.

If it was the intention in substance that the power of consolidation given in the charter of the defendant or its amendments to create a monopoly, it should have been clearly expressed and will not be presumed.

Stone vs. R. R. Co., 62 Miss. 607.

The Northern Pacific Railroad Company, at least within the jurisdiction of Minnesota, was bound by the legislation of 1874 and 1881, assuming that the power given to the defendant might confer sufficient power upon the Northern Pacific Railroad Company to become party to such a consolidation, yet that power, so far as the Northern Pacific Railroad Company was concerned, was not a vested right, and therefore the latter corporation was bound at least within the State of Minnesota by the prohibition in the legislation of 1874 and 1881 against the consolidation of the character claimed by the defendant involved in this suit. It was thus

disabled from entering into such a contract or joining in such a consolidation.

It would seem plain that corporation created under the general law, since the legislation of 1874 and 1881, with respect to the power of consolidation must be bound by the provision of said legislation in relation to the subject, and would be disabled by reason of the prohibitory law from being the party to a consolidation contrary to this provision.

Can it be claimed that the defendant corporation, notwithstanding this disability, could, under its charter, consolidate with such corporations last mentioned, and why would not the same rule apply to corporations not in existence prior to the passage of such legislation, but which were bound by its terms upon their creation?

It is fair to presume that the legislature in granting this power to the defendant did not intend to be excluded from enacting such laws which would affect other corporations which could not claim an exemption from their operation upon the plea of vested rights.

The effect of consolidation and its bearing upon the legislation of Minnesota of 1874 *and* 1881.

In the case of St. Louis, Iron Mountain & Southern Ry. Co. vs. Berry, 113 U. S. 465, the said company was a consolidation of the Cairo & Fulton Railway Company with the old corporation of the St. Louis, Iron Mountain & Southern Railway Company, in 1874.

The Cairo & Fulton Railway Company was incorporated in 1853 in Arkansas, by act of the legislature of

that state. Section 10 of its charter gave it power to make joint stock with any other railroad company in that or any other state; and, in substance, to consolidate with such other companies.

Section 11 provided for exemption from taxation of its capital stock and dividends and an exemption from taxation on its road, fixtures and appurtenances until after it paid interest at the rate of ten per cent per annum. (Page 466.)

The constitution of Arkansas of 1868 provided that the general assembly should pass no special act conferring corporate powers, but that corporations should be formed under general laws which might from time to time be altered or repealed; also, that the property of the corporation should be subject to taxation.

Afterwards during the same year, 1868, the legislature passed a general law for incorporating railroad companies, making provision for consolidation of such companies, and that when such "consolidation is effected the said company shall have and be entitled to all the benefits, rights, franchises, lands, and tenements, and property of every description belonging to said road or roads so sold or consolidated, and shall be liable to all the pains and penalties imposed by their respective charters."

The consolidation in question in that case was made under an agreement, as claimed by the consolidated companies, in section 10 (pages 467, 468), and it was assumed by the supreme court in its decision that it was so made under said section 10. (Page 474.)

The railroad commissioners of Arkansas proceeded to assess the property of the consolidated company contrary to the exemption in the charter of the Cairo Railroad Company, and the former (plaintiff in error) filed a bill in the state court to restrain the commissioners.

The plantiff was defeated in the state courts, and a writ of error brought the case before the United States supreme court, which affirmed the decision of the supreme court of Arkansas.

The points cited appear in the syllabus as follows:

"A consolidation of two railroad companies, by an agreement which provides that all the property of each company shall be taken and deemed to be transferred to the consolidated company [naming it], as such new corporation, without further act or deed, creates a new corporation, with an existence dating from the time when the consolidation took effect, and is subject to constitutional provisions respecting taxation in force in the state at that time.

"One section in the charter of a railroad company authorized it to consolidate with other companies. Another section provided 'that the capital stock and dividends of said company shall be forever exempt from taxation.' Held, that a new company, created by the exercise of the power to consolidate, took the property and franchises of the old company subject to the organic law as to taxation at the time of the consolidation." (See syllabus.)

It would seem from the principle cited in that case, that, inasmuch as a consolidation under such conditions would subject the consolidated or new corporation to the laws existing at the time of the proceedings, to consolidate in such a case should not be repugnant

to the statutes affecting the subject in force at the time, and that general provisions in charters for consolidation, as in this case, should not be construed as a renunciation of the state of its power over the same.

Compare section 10 of the charter of the Cairo & Fulton Railroad Company with the section in the charter of 1856 and amendment of 1865 relied on by the defendant.

The Northern Pacific Railroad Company has no power under its charter to consolidate with the defendant or any other corporation; it owes its creation, charter and powers to an act of Congress and not to any state law. A consolidation creates a new corporation; but in this case how could there be a new corporation formed by an act of Congress and at the same time by the state law without any authority from the general government.

It seems clear that the Northern Pacific Railroad Company or the proposed reorganized company must derive its authority to merge in or consolidate with another corporation, from Congress, whose creature it is, and to which it is subject to under the reserved power in its charter before noticed. It cannot derive such a power from the charter of the defendant or other act of the state legislature, and therefore the proposed arrangement which is dependent upon this power to consolidate is unwarranted on the part of the Northern Pacific Railroad Company as well as on the part of the defendant.

IV.

THE LEGISLATION OF 1874 AND 1881 WAS IN ACCORDANCE WITH THE REQUIREMENTS OF THE CONSTITUTION OF THE STATE OF MINNESOTA.

The constitution of the State of Minnesota provides "that no law shall embrace more than one subject, which shall be expressed in its title." (Article 4, section 27, of constitution of State of Minnesota.) The act of 1874 is entitled "An act relating to railroad corporations and common carriers."

The body of the act relates to corporations which are common carriers, and therefore there was but one subject, and that one subject was expressed in the title.

The title of the act of 1881 is "An act to authorize any railroad company to lease, purchase, or in any way become owner of or control any other railroad corporation or to consolidate therewith."

The body of the act provides for consolidation, leasing, or purchasing railroads organized under general special charters, when they can lawfully do so. (Sections 1 and 2.)

Section 3 contains the prohibition in question.

Sections 1 and 2 provide for the mode of consolidation, and section 3 shows under what circumstances such consolidation cannot be effected, and is germane to the general subject of the act, which is the manner in which one railroad may become owner of, or control, another railroad, or be merged in the same, by

consolidation, and this is one general subject and as such is clearly expressed in the act.

Such consolidation or arrangement between railroads being effected, sometimes by purchase, sometimes by leasing, sometimes by what is more properly called consolidation or merger of one company into another, or the creation of a new company by the combination of both.

This point was effectually settled and explained in the case of Johnson vs. Harrison, 47 Minn. 577.

In that case under the title of "An act to establish a Probate Code," the body of the act related to the jurisdiction of the probate court, its procedure, the subject of wills, the law of descent, infant's estate, administrators and executors, guardian and ward, besides specifically repealing acts of several independent laws.

The supreme court, notwithstanding this number of apparently different subjects, decided that the term "Probate Code" was but one general and comprehensive subject, and that the law was constitutional.

The supreme court in that case says: "While this provision is mandatory, yet it is to be given a liberal, and not a strict, construction. It is not intended, nor should it be so construed, as to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, or by multiplying their number, or by preventing the legislature from embracing in one act all matters properly connected with one general subject.

The term "subject," as used in the constitution, is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. To constitute duplicity of subject, an act must embrace two or more dissimilar and discordant subjects, that, by no fair intendment, can be considered as having any legitimate connection with or relation to each other. All that is necessary is that the act should embrace some one general subject; and by this is meant merely that all matters treated of should fall under some one general idea, be so conected with or related to each other, either logically or in popular understanding, as to be parts of or germane to one general subject. The large number of related or cognate matters are often treated of under some comprehensive title, such as 'Criminal Code,' 'Penal Code,' 'Code of Civil Proceedure,' 'Private Corporations,' 'Railroad Corporations,' and the like, and are familiar illustrations of what may be legitimately included in one act." (See page 577.)

The title of the act of 1874 is general as relating to railroad corporations and common carriers, and such a title is one of the illustrations given by the supreme court of Minnesota, in the case last cited, as a sufficient title for the body of the act.

The act of 1881 is more diffused.

The body of the act shows one general subject, and this is the subject of consolidating of railroad companies by the ordinary method of purchasing, leasing,

or becoming the owner by the ordinary method of one railroad company purchasing, leasing or becoming the owner of another company, which is more technically a consolidation, and the body of the act and its title, is germane and relates to the same general subject, and clearly comes within the rule laid down by the supreme court of Minnesota in the case last cited.

All other specifications of error not referred to appear to be sufficiently covered by the argument on the preceding points.

Henry J. Horn

Attorney and Counsel for Appellant.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 768.

THOMAS W. PEARSALL,
Appellant,

vs.

THE GREAT NORTHERN RAILWAY COMPANY,
Respondent.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

SUPPLEMENTAL BRIEF OF APPELLANT.

H. J. HORN,
Attorney and Counsel of Appellant.

PIONEER PRESS CO., ST. PAUL, MINN.

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PIONEER PRESS CO., ST. PAUL, MINN.

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1895.

THOMAS W. PEARSALL,
Appellant,

vs.

GREAT NORTHERN RAILWAY COMPANY,
Respondent,

Appeal from the Circuit Court of the United States for the District of Minnesota. In Equity.

SUPPLEMENTAL BRIEF.

The appellant by way of supplement to his general brief in this case states, that the Hon. Louis L. Kelly, judge of the District Court of Ramsey County, in the State of Minnesota in the recent suit therein of the State of Minnesota ex rel. H. W. Childs, Attorney General, against the Great Northern Railway Company, involving the same questions arising in the above-entitled suit of Thomas W. Pearsall against the Great

Northern Railway Company, and granting the application of said attorney general for an injunction against said company to restrain it from carrying out the proposed arrangement with the Northern Pacific Railroad Company, filed his decision and opinion after the general brief of the appellant had gone to print, which decision or opinion counsel for appellant appends at length.

It will be noticed that the opinion among other points decides, in effect, that the defendant had not power under the provisions of its charter and amendments relied on by it to consolidate with the Northern Pacific Railroad Company, or to enter into the proposed arrangement. The appellant's counsel desires the benefit of this position and point of Judge Kelly's, and to use his opinion thereon as an argument in its favor upon the appeal under the third point of his general brief.

The decision and memorandum follow:

The cause came before the court upon the motion of the attorney general upon the summons and complaint and the affidavit of the Hon. H. W. Childs, accompanying the notice of said motion, for an order of the court directing that a writ of injunction issue herein to restrain, pending the determination of this action, the said defendant above named, its officers, directors, agents, servants and attorneys from in any manner or from entering into, consummating or affecting the agreement or arrangement referred to in the complaint in this action, or from in any manner consolidating

with the Northern Pacific Railroad Company, as referred to in the complaint in this action; and said motion was heard orally upon said summons and complaint, the answer of defendant thereto and the affidavit aforesaid, on the 7th, 8th, 9th, and 10th days of October, A. D. 1895, and thereafter, and on October 25th submitted finally on briefs; and the court having heard the argument of the Hon. H. W. Childs, the attorney general, in behalf of the plaintiff and for said motion, and the Hon. C. K. Davis of Counsel, M. D. Grover, Esq., C. A. Severance, Esq., and E. P. Sanborn, Esq., attorneys for defendant, contra, and having duly considered the same, and the court ~~below~~ being now fully advised, it is

Ordered, that said motion be and the same is hereby granted. Let the writ of injunction issue, as prayed in said motion papers and in said complaint.

WILLIAM LOUIS KELLY,

St Paul. Minn. District Judge.

Dated November 16, 1895.

MEMORANDUM.

The questions decided here are the same involved in a similar motion in Pearsall vs. Great Northern Railroad Company, pending in the United States circuit court for the District of Minnesota, and decided Sept. 14, 1895, by Sanborn, judge. If I could conscientiously concur in that decision, now before me, I would say so without regard to consequences, and also without note

or comment, because the learned judge in his opinion has said all that can be to support his conclusions. But I cannot agree with him either in his minor premises necessary to support his ruling or in the ultimate ruling itself. For this reason and because this matter involves such momentous consequences—private property, millions of dollars in value, and public rights which cannot be estimated—I deem it a duty to state as clearly and fully as I can my reasons for this decision.

The defendant derives whatever franchises, rights or privileges it has, so far as is necesary to be considered, from the following legislative acts:

First—An act to incorporate the Minneapolis & St. Cloud Railroad Company, approved March 1, 1856, passed by the legislative assembly of the Territory of Minnesota. (Session Laws 1856, chapter 160.)

Second—An act of the state legislature of Feb. 23, 1864 (Session Laws 1864, chapter 5), amending the act of 1856.

Third—An act to amend the act of 1856, above stated, and to repeal certain parts of the act of 1864, approved Feb. 28, 1865. (Session Laws 1865, chapter 4.)

The substance and history of these acts are as follows: The original act of 1856 conferred the usual powers to be a corporation, issue stock, build and operate railroads, acquire right of way, etc., condemn lands therefor and cross highways and navigable streams. The roads authorized by said act to be constructed were one from Minneapolis to St. Cloud; "also a main

line of road via Mille Lac to a point at or near the mouth of the St. Louis river," no starting point being designated; and a branch from Minneapolis to the Iowa line.

The first section of this act named in the usual way the promoters of the enterprise and made these gentlemen "a body politic and corporate," and they were required by section 12 to "complete and equip at least one track from Minneapolis ~~and~~ to St. Cloud within seven years" from the time the act took effect.

The original act of 1856, by section 17, reserved to the state the power of amendment, under certain conditions.

In 1864 the Minneapolis & St. Cloud Railroad Company, as represented by the incorporators named in the original act, having failed to construct any part of its line from Minneapolis to St. Cloud, as required by said section 12, the legislature passed an act to amend the act of March 1, 1856 (S. L. 1864, c. 5), wherein were named different incorporators (section 1), and whereby, in section 2, the company was authorized to build its road "from St. Cloud to the navigable waters of Lake Superior," thus changing the original act radically and curing the defect as to the initial point of the Lake Superior section of the road. This act was to be accepted by the new incorporators within six months. The company was also empowered to build a branch road from St. Cloud to the Minnesota river. Section 4 of the act of 1864 reads:

"And be it further enacted, that the said 'Act to incorporate the Minneapolis & St. Cloud Railroad Company' is hereby declared to be in full force and effect, except so far as the same is repealed or modified by this act."

In 1865 the legislature of Minnesota passed an "act to amend an act to incorporate the Minneapolis & St. Cloud Railroad Company," approved March 1, 1856; and to repeal certain portions of an act amending the charter of said company, passed Feb. 23, 1864.

This last act, after reciting the passage of the original act of 1856, the organization under it of the incorporators named, the passage without their consent of the act of Feb. 23, 1864, whereby other incorporators were named, and the failure of those incorporators to organize within six months as required, repealed the first and third sections of the act of 1864 and re-enacted the first section of the act of 1856, and also the twelfth section in a modified form. It also added several other sections to the charter, which will be fully noticed hereafter. This act of 1865 did not contain any express reservation of the right to amend in future.

The corporation formed under the act of 1856 was somehow kept alive, and on Sept. 16, 1889, its name by proper authority was changed to the Great Northern Railway Company, the defendant. In this action the defendant claims the right to do what in its answer it says it proposes with reference to Northern Pacific Railroad Company, under these legislative acts.

The question therefore arises: (1) Is such agreement or arrangement lawful? and (2) is it authorized by the defendant's charter, either in express terms or by implication? And that involves the construction or consideration of the acts of March 1, 1856, Feb. 23, 1864, Feb. 28, 1865, already referred to, and also the General Laws of 1858, chapter 70, section 21; General Laws of 1874, chapter 29, section 1; General Laws of 1881, chapter 94, sections 1, 2, and 3.

Is the proposed contract lawful as a traffic agreement?

The answer is carefully worded, possibly to avoid the effect of a broader answer made in the Pearsall case. But this motion places before me part of the pleading in that case, by the affidavit of the attorney general, which is not controverted. Besides, the court has a right to look to the substance of things, and no mere use of words, where the real intent is apparent, should be permitted to obscure that intent.

The situation is this, in a nutshell: The defendant corporation, principally as the lessee for 999 years of the St. Paul, Minneapolis & Manitoba Railway Company, operates lines of railway from St. Paul and Minneapolis west to Everett, on Puget sound, in the State of Washington. It has connections with Duluth and Superior, and by branches north and south of its main line it reaches and crosses many important centers of population in Minnesota, Iowa, North and South Dakota, Montana, Wyoming, Oregon and Washington. The aggregate length of defendant's railroads, passing

thus through the most productive and wonderful portions of the United States, aggregates nearly 4,500 miles.

Starting from the same cities, with lines connecting with Lake Superior, the Northern Pacific Railroad Company owns a system of railway traversing all these states (except Iowa), and terminating at the city of Portland, Ore., nearly 4,500 miles of rail. One of its branches also reaches Winnipeg, in Manitoba.

These two great transcontinental systems are in every sense competing, and, in many cases, parallel.

The defendant company has a paid up capital stock of $25,000,000, and is prosperous, at least that is the legitimate inference to be drawn from what it proposes in this case. The Northern Pacific Company, on the other hand, is burdened with debt, insolvent, in the hands of a receiver (or, to speak more accurately, of several receivers). Its stock outstanding amounts to over $80,000,000, and its bonded debt, secured by mortgages, in round numbers, over $118,000,000. Most of these mortgages are in process of foreclosure.

The answer sets out in detail wherein it would be of great advantage to the defendant could it acquire the right "to bill and route its traffic, both passenger and freight, from points on its line, by way of convenient junction or connecting points on the line of the Northern Pacific Company, now existing or hereafter to be constructed, to Winnipeg, Tacoma, Portland and all points in the different states through which the line of the Northern Pacific Railroad extends, and

which points are not reached by the line of this defendant," with just and lawful agreement between the companies for mutual interchange of cars and traffic, and the right to defendant for use of depots and terminal facilities of the said Northern Pacific Company at Spokane Falls and other points, and other mutual rights of trackage when lines are so near as to be used for double tracks; thereby saving the defendant very great expense to acquire these advantages otherwise, and as defendant claims, to the great benefit to the general public.

An inspection of the map of the respective railway systems shows where these arrangements might be made advantageously to defendant, and it goes without argument that any reasonable arrangement between railroads—even rival and competing lines—to mutually "bill and route" traffic, both passenger and freight, over their respective lines, is proper and commendable, for the obvious reason that such arrangement, when reasonable, facilitates travel and freightage. But is this is a mere traffic agreement? The character of the contract is not changed by the pleader when it is described as "fair and lawful," or equivalent words, because it must be borne in mind that this is a mere conclusion. And a conclusion, from any point of view, entirely erroneous, should the court fail to find authority in defendant's charter to enter into such agreement. For corporations have such powers only as the act creating them confer, and are confined to the exercise of powers expressly granted, and such incidental powers as are

necessary to carry into effect those specifically conferred.

The proposed agreement is set out in the answer, and in substance is as follows: Certain mortgages covering all the railway property and franchises of the Northern Pacific Railroad Company, including its franchise to be a corporation, are to be foreclosed, the property sold, bid in by a committee of bondholders or their agents for the benefit of all the bondholders secured by said foreclosed mortgages. They shall thereafter reorganize said "railroad, franchises and property as a new corporation," and then issue the reorganized company's bonds "in $100,000,000 or over, and its full paid capital stock of one hundred millions of dollars." Such reorganized company shall contract with defendant, granting and securing to defendant all the rights and privileges mentioned in the answer and hereinbefore broadly stated.

To induce this agreement the answer alleges that:

"a. To secure the bondholders of such reorganized company against possible loss which may result from such traffic arrangement, and in consideration thereof, this defendant is to guarantee, for the benefit of the holders of such stock, the payment of the principal thereof, together with interest thereon, to an amount in the aggregate of such interest guaranty upon said bonds and upon all securities issued by said reorganized company not to exceed six million two hundred thousand dollars per year, which guaranty shall, if required by said reorganized company, be written and

executed upon the back of each of said bonds. Such guaranty, however, is to be executed only upon condition that the stockholders of such reorganized company shall transfer to the stockholders of the defendant, or to some person in trust for them, one-half of the fully paid capital stock of such reorganized company.

"b. Or it is proposed to consolidate some portion of its capital stock with some portion of the capital stock of the said reorganized company, and, as a means to that end, to acquire some portion of the stock of the said reorganized company and to guaranty the payment of the principal and interest of the bonds or securities to be issued by the said reorganized company to the maximum amount aforesaid.

"Defendant admits that it claims the right to enter into the traffic agreement and to guaranty the payment of the principal and interest of the bonds and securities of the reorganized company upon the terms and conditions above stated, under and pursuant to the provisions of its charter and the acts under which it was organized. It also claims the right, under its said charter and laws, to consolidate its stock with the stock of such reorganized company, and to acquire the ownership of a portion of the stock of said reorganized company, as above alleged."

The portion of the answer above quoted, marked "b" and commencing with "or it is proposed," etc., except it be an admission of intent to consolidate, is not a denial nor an intelligible affirmation. I assume the

proposed contract to be plainly pleaded in the preceding paragraphs.

I have no hesitation in holding, and do hold: First—That the lines of railway within Minnesota now owned and controlled by the Northern Pacific Railroad Company, and those now operated and controlled by the defendant Great Northern Company, are, in the sense of the statute laws of the State of Minnesota, parallel and competing lines of railway. This is practically admitted in the pleadings.

Second—That this so-called traffic arrangement, while colorable as a contract for exchanges between the parties thereto of facilities for traffic and travel over their several lines of railway, is in fact a scheme for the consolidation of these two great rival railway systems, whereby the Northern Pacific Railroad Company, as reorganized, and all the lines of railway now or hereafter owned by it, and all now in the hands of its receivers, shall after said agreement or arrangement is carried out pass under the power of and be wholly controlled by the defendant, the Great Northern Company.

No decided cases bearing on this question need be cited, but State vs. Vanderbilt, 37 Ohio St., 590, and Louisville & Nashville Railroad Company vs. Commonwealth of Kentucky, 31 S. W. Rep. 476, are instructive. Simply the application of common sense in the light of common experience to this proposal is all that is necessary to determine its real meaning. Corporations are governed by the stockholders, shares of stock vote; the majority rules. How long does any sane man sup-

pose the Great Northern Company, or its stockholders, after it or they get control of exactly one-half of the stock of the reorganized Northern Pacific will remain without full and absolute control of that company? It is idle to suppose any other intent or conclusion. And would the Great Northern go under these heavy bonds for a mere traffic contract?

Nor will it do to say that there is no law to prevent the stockholders of the Great Northern Company as individuals buying up a controlling interest in the Northern Pacific Company. That question is not here. Whatever is proposed to be done, is proposed by the defendant corporation. The corporation pays the consideration and the corporation receives the benefit, and it is immaterial under whose name it acts. When this court is called upon to deal with the individual stockholders of defendant, it will deal with them as fearlessly and as fairly as it deals now with the corporation. "Sufficient unto the day is the evil thereof."

And Third—That the contract or so-called traffic arrangement, as it appears from the complaint, answer, and moving papers herein, is a consolidation of said lines of railway, and it is contrary to the public policy of the State of Minnesota, as such policy has always existed and been known, and is expressly prohibited and forbidden by chapter 29, section 1, General Laws 1874, and chapter 94, General Laws 1881, which said laws read as follows:

"Section 1. No railroad corporation, or the lessees, purchasers or managers of any railroad corporation,

shall consolidate the stock, property, or franchises of such corporation with or lease or purchase the work or franchises of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line; and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues." (Gen. Laws 1874, c. 29.)

It is provided by General Laws 1881, chapter 94, that:

"Section 1. Any railroad corporation, either domestic or foreign, whether organized under a general or by virtue of a special charter, may lease or purchase, or in any way become owner of or control, or hold the stock of, any other railroad corporation, when their respective railroads can be lawfully connected and operated together so as to constitute one continuous main line, with or without branches.

"Sec. 2. Any railroad corporation, whether organized under a general law or by virtue of a special charter of the State or Territory of Minnesota, or under the laws of any other state or states or territory, whose lines of railroad now or hereafter constructed within or without this state can be lawfully connected and operated together to constitute one continuous main line, with or without branches, so as to admit of the passage of trains over them without break or interrup-

tion, may consolidate their stock and franchises upon such terms as may be agreed upon, so as to become one corporation by any name by them selected.

"Sec. 3. No railroad corporation shall consolidate with, lease or purchase or in any way become owner of or control any other railroad corporation, or any stock, franchises, rights of property thereof, which owns or controls a parallel or competing line."

I am of the opinion, further, that the contention of defendant's counsel that section 3, supra, is void because not sufficiently expressed in the title of the act, as required by the constitution, is not well taken. The act is entitled "An act to authorize any railroad company to lease, purchase or in any way become owner of or to control any other railroad corporation, or to consolidate therewith." Section 3 forbids the exercise of these powers in any case when the lines are parallel or competing. It is entirely germane to the subject, and is not obnoxious to section 27, article 4, of the constitution, which is: "No law shall embrace more than one subject, which shall be expressed in its title."

Having reached the conclusion that the contract or arrangement proposed to be entered into by the defendant company and the reorganized Northern Pacific Company is opposed to the public policy of this state and forbidden by its statutes, the question arises, has the defendant, Great Northern Company, a vested right, by virtue of its charter of 1856 and 1865, to consummate this arrangement, regardless of public policy or statute law of the state? The defendant's counsel

insist that it has just such rights, vested and indefeasible by any act of the state.

Mr. Thompson, in his admirable work on corporations, volume 4, section 5345, states the rule that franchises of the kind here considered "being privileges not enjoyed by the people, are said to be against common right." As between the public and the corporation the grant is to be strictly construed in favor of the state or public. Summing up, the learned author says: "The true meaning of the doctrine is that grants to corporations are construed favorably to the public where there exists a reasonable doubt as to the extent of the privileges conferred." Of course it does not follow that we may wrest words from their common and well understood significance, or that we can give effect to one portion of the charter and read out another part. The charter should be read as a whole, and construed as a whole, giving effect to all of it when possible, and construing it "according to the plain meaning of the words, when they are free from ambiguity and doubt."

The portion of defendant's charter (except section 17, Laws 1856, elsewhere considered) which in my judgment bears on this subject, and the generals laws of the state which may affect this construction, are as follows: Special Laws 1856, chapter 160, being the original charter, contains the following:

"Sec. 6. Said company is hereby authorized and empowered to connect its road by branches with the road of any railroad company or companies in the territory

or future State of Minnesota that are now chartered or may hereafter be chartered, or to become part owner or lessee of any railroad in said territory, and any railroad company in said Territory of Minnesota, duly organized, or which may hereafter be organized, under the laws of said territory or future State of Minnesota, may connect its road with the road of said Minnesota, and may in like manner, with the consent of said company, become part owner or lessee of the road of said company, or of any of its branches or any portion thereof, situated in this territory. * * *

"Sec. 12. * * And the said corporation are hereby authorized and empowered to connect with any railroad running in the same direction with this road, and where there may be any portion of another road which may be used by this company, this company shall not be bound to build such portions of road so long as they may use the portions of any other road which may answer the same purpose."

In 1858, by general law, chapter 70, the legislature of the State of Minnesota passed "an act to provide for the incorporation and regulation of railroad companies." Section 21 of that law, as far as necessary to be considered here, reads as follows:

"Sec. 21. That whenever the lines of railroad of any railroad companies in this state, or any portion of such lines, have been or may be constructed so as to admit the passage of burden or passenger cars over any two or more of such roads continuously without break or interruption, such companies are hereby authorized to

consolidate themselves into a single corporation in the manner following:"

Special Laws 1865, chap. 4, being an amendment to the act of 1856, contains the following:

"Section 3. The said act, entitled 'An act to incorporate the Minnesota & St. Cloud Railroad Company,' approved March 1, 1856, is hereby re-enacted and amended so as to read as follows:

"Sec. 12. The said corporation is hereby authorized and empowered to connect with or adopt as its own, on such terms as may be agreed upon between the parties or companies interested, any other railroad running in the same general direction with either of its main lines, or any branch road which said corporation is authorized to construct, and where there may be any portion of another railroad which may be so used by this company or corporation, it shall not be bound to build such portion of its own road or branches, so long as it may use the portion of any other road which may answer the same purpose."

"Sec. 8. The said Minneapolis & St. Cloud Railroad Company, and each of its branches, being organized as aforesaid, shall have power to consolidate the whole or any portion of its capital stock with the capital stock or any portion thereof, of the road or branch road of any other railroad corporation or company, having the same general direction or location, or to become merged therein, by way of substitution, upon such terms or conditions as the two companies may agree

by the consent of a majority of the stockholders of each company."

"Sec. 9. The said Minneapolis & St. Cloud Railroad Company may consolidate any portion of its road and property, and each branch, being organized as aforesaid, may consolidate the whole or any portion of its branch road and property, with the franchises of any other railroad company, or any portion thereof, upon such terms and conditions as said companies, or a majority of the directors thereof, with the consent of the holders of a majority of the stock, respectively, may agree."

"Sec. 12. The Minneapolis & St. Cloud Railroad Company, and each branch thereof having a separate organization as above provided for, may consolidate the whole or any portion of its main lines or branch railroads, and all the property, rights, powers, franchises, grants and effects pertaining to such roads with the rights, powers, franchises, grants and effects of any other railroad company either within or without this state, upon such terms and conditions as such company or branch organization, or a majority of the directors thereof, may respectively agree, and the railroad company in which such railroad shall become vested by such consolidation shall hereafter hold and enjoy all rights, grants and powers and franchises in respect to such which the company or branch possessed before the consolidation, but the said Minneapolis & St. Cloud Railroad Company or branch organization thereof shall

remain vested with all its other rights, powers, privileges and franchises."

The attorney general contends that right to consolidate with a parallel or competing line is not granted either by the original charter or by either of these amendments. That if such right is granted, in terms or by necessary implication, the state reserved by section 17 of the act of 1856, the right to amend the charter, and that it has in effect amended it by the General Laws of 1874 and 1881, supra. The defendant's counsel contend that such right is expressly granted by the terms of the act of 1865, and by necessary implication in the act of 1856, of which the last was an amendment.

I have thus purposely quoted in full every portion of the charter bearing on this question here, because it has been broadly stated that the right to consolidate, as claimed by defendant, is granted them by every conceivable method of expression. An analysis of the language used will show how little foundation there is for such contention.

I am satisfied clearly that no such right was granted by or flowed from the original charter act of 1856. The most casual reading of that act will show this to be correct. And, indeed, although they argued orally the contrary, in their brief submitted after the oral argument, defendant's counsel concede this point. They say, on page 47, being an answer to a supplemental brief of the attorney general: "Second—The rights of the defendant to make the proposed arrangement with

the reorganized Northern Pacific company do not rest upon the provisions of the act of 1856. Defendant's reliance is on the act of 1865."

Then beginning with the above concession, because it is true, this question must be answered, What right, if any, to consolidate with other railroad companies did defendant get by the act of 1865, when read in connection with the act of 1856, and the general law of 1858, which I have already quoted?

The act of 1865 must be construed as in pari materia with that of 1856, and the general law of 1858, intervening between the two, should also be read in connection therewith.

Having these two things in mind, it is clear that section 3 of the act of 1865, which re-enacted and amended section 12 of the original act of 1856, conferred no greater rights than did the original section. Indeed, it is precisely (so far as the question here considered) the original section re-enacted, except that it gave the company the right to use lines of road already constructed and running in the same general direction "with either its main lines *or any branch road* the corporation is authorized to construct," the re-enacted section adding the words here italicized.

Section 8 of the act of 1865 is of the same general tenor. It authorizes the Minneapolis & St. Cloud Railroad Company "and each of its branches to consolidate the whole or any portion of its capital stock with the capital stock * * * of any other railroad corporation having the same general direction or location or to

become merged therein by way of substitution." That is, with any other company having the right to build a road from Minneapolis to St. Cloud or from St. Cloud to Superior, or over any branch line of said company, so that the other railroad company might take the place of the Minneapolis & St. Cloud Company or any branch thereof, the manifest intention being to procure the building of the contemplated roads, either by this company or by substitution of some other. Section 8 does not confer the right claimed in defendant's answer.

Section 9 of the act of 1865 is awkwardly worded. The corporation is given power to consolidate any portion of its "road or property * * * with the franchises of any other railroad company or any portion thereof." The words "road or property," in their ordinary meaning, are roadbeds, rails, cars, depots, real estate, etc., (i. e.) tangible property. Franchises are privileges, powers, incorporeal rights. How these can well be united I cannot see, except it be held that the intention was to give the company the power to transfer its "road and property," when built or acquired, to be operated under the franchises of some other company. That is all section 9 can be made to mean, and that is not the right here claimed.

But section 12 of the act of 1865 is broader, and unless it must be limited by section 21 of the General Laws of 1858 and by the manifest intent of all the other parts of both acts of 1856 and 1865, to have application only to cases where the roads are "constructed so

as to admit the passage of * * * cars over two or more such roads continuously, without break or interruption," the language used may seem sufficiently comprehensive to warrant this claim of the defendant; provided, of course, always, that the other contention is true, that this right vested upon the acceptance of the charter and is indefeasible.

I am of the opinion that the legislature intended by this section 12, of the act of 1865, only to extend the rights already granted by the preceding sections, as to consolidation with and the user of tracks, etc., of other railroad companies having lines running in the same general direction and within Minnesota, "to companies * * without the state." That section 12 conferred no greater right than section 21, of chap. 70, General Laws 1858, and was not so intended. I might therefore rest my decision upon the position that nowhere in defendant's charter is the right to consolidate as asserted in the answer to be found.

But lest I wrong the defendant in this, I will assume, for the argument, that somewhere in defendant's charter, possibly in section 12 above, the right asserted is conferred. It is then claimed by the attorney general that the legislature, by section 17 of the act of 1856, reserved to the state the right to "amend" the charter, and that right extends to the act of 1865, it being an amendment of the original act. I have already held that the proposed contract is forbidden by the General Laws of 1874 and 1881, and is contrary to the public policy of the state.

The word amend is thus defined in the Century Dictionary: "To make a change or changes in the form of a bill or motion or a constitution; properly to improve in expression or detail, but by usage to alter either in construction, purport or principle. * * *Any such alteration is termed an amendment, even when its effect is entirely to reverse the sense of the original bill or motion." The significance of the word amend is broad enough to warrant the legislature in passing the acts of 1874 and 1881. And it is well settled that the General Laws will operate to amend or modify the terms of a special law when that result is clearly intended.

This requires me to determine what section 17 of the act of 1856 means, if it means anything. This section reads as follows:

"Section 17. This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly, in any manner not destroying or impairing the vested rights of said corporation."

What rights are here saved to the people? What rights of the corporation guarded? The defendant's contentions leave the people no substantial rights under it. So apparent is this that the very able counsel for defendant could point me to nothing in this law about which the state might in future legislate under the reserved power of section 17, except it be in mere matters of form of procedure, or as one urged the right to grant additional powers to the company. The state need make no such reservation, and it is idle to

suppose it meant to do so in this case. The learned United States judge in Pearsall vs. Great Northern Company appreciated the difficulty and practically read section 17 out of the charter. He said that is where the legislature of 1856 left it.

Now I am convinced that section 17 means something; that the legislature intended to reserve to future legislatures the right to amend or alter that charter in substantial particulars, not in mere form; that when they limited the right reserved to amend "in any manner," by the words "not destroying or impairing the vested rights of said corporation," they meant to say that whoever should act under that charter would be compensated for all damage sustained in case the state thereafter should essentially modify the grant. My reasons for this conclusion are briefly these: The contract must be considered as a whole; all parts must be given a reasonable meaning; the language used must govern where unambiguous; where doubtful, it may be interpreted in the light of surrounding circumstances, every doubt resolved in favor of the people and finally, the intent of the parties must be given force. The legislature itself so construed section 17 by amending in substantial particulars the act of 1864 and 1865, in which defendant's predecessor acquiesced. An examination of the railroad legislation of that period shows that similar provisions were always so construed and acted upn. (See Ed. R'd. Laws, pp. 238, 259, 447, 459, 509, 515, 552, 559, 571, 582, 592, 595, 606, 610.)

At that period the Dartmouth college decision (Dartmouth College vs. Woodward, 4 Wheat. U. S. 518, 624) had become the law of the land. And although its soundness has been questioned by many law writers, among the earlier Mr. John M. Shirley of New Hampshire, and later Mr. Seymour D. Thompson, eminent in his line, yet for the courts it was then and has remained to this day controlling. Whatever men thought of its verities and however much they revered the immortal memory of the men who rendered it, still its consequences were so far-reaching that it startled the nation, and every state began immediately to guard against its effect.

The difficulty lies not in apprehending the principles decided in that case, but in applying those principles to given cases with exact justice to the corporation and to the public. The truth is, the Dartmouth college case, like charity, is often invoked to cover a multitude of sins. And because that decision is so far reaching courts are careful how they read it into contracts by interpretation. The law must be declared and enforced regardless of consequences, but when a contract, such as the one at bar, is claimed, it should be so clearly written that he who runs may read. The courts must stand, as counsel for defendant urges, like a wall to protect vested rights from popular clamor, sometimes unreasoning; but they should be equally alert to defend the rights of the state from the subtle invasion of corporate claims, equally dangerous, because not so easily detected.

The legislative assembly of Minnesota, in 1856, comprised many great men. Great in the sense that they were founders of a great commonwealth. I recognize among their names men eminent in the various walks of life, a few, then and since, leaders at this bar. These men knew of the Dartmouth college decision, and they appreciated the danger to the state when granting private charters, without powers reserved to amend. The territory then was an untracked wilderness. A prime necessity of the hour was to reach the East by rail, or by rail and water.

That is clearly what was meant by the permission given railroad companies to consolidate where their lines were such as to permit cars to pass continuously without break or where they followed the same general direction. While the legisature knew that unless the power to amend was reserved in the charter the state for all time would go under bonds, they also deemed it wise to assure those who might accept these charters that their property rights acquired thereunder would be always protected. These rights when vested (among other things to be noticed hereafter) is what is meant to be protected in section 17, by the words used.

It is to be noticed that while the Dartmouth college case settled the rights of private corporations where no power to alter or amend was reserved in the charter, the property rights acquired by corporation by user under charters, containing such reservation in case of injury by repeal or amendment were not in 1856-1865 so clearly understood. It was then undoubtedly the

law, speaking generally, that where one in good faith acts under a revocable power and acquires property, or rights in property, thereunder, he should be protected in those rights in case the power is revoked. But like many legal truths resting in the mass of the law, the occasion has not arisen to call for a full declaration in respect to the rights of corporations in property acquired under charters subject to amendment or revocation, after they had been amended and revoked. It was as late as March 13, 1892, when the United States supreme court, in a case from Massachusetts, was called on to decide this very question. See Greenwood vs. Union Freight R. R. Co., 105 U. S. 13 (Book 26, Law Ed., p. 961). So this is another consideration which sustains my position.

This construction of section 17 gives force and effect to every word it contains. Any other leaves it a mere meaningless jargon. This construction is reasonable and undoubtedly expresses the intention of the parties. It is absolutely just to both corporation and state.

But there is another reason, found in the charter itself, which proves that the words "not destroying or impairing the vested rights of said corporation," must refer to rights other than those which inhere in the grant, that these words do not refer to incorporeal rights and therefore do not protect them. Section 5 of the charter (1856) reads thus: "The said company is hereby authorized and empowered to construct their said railroad and its branches in sections as fast as they may obtain the means for so doing; and the fran-

chise of the portions so completed and put in operation shall vest in said company the same as though the whole was completed." Here were incorporeal rights which were to vest, by the terms of the charter, not upon its acceptance, but on completing certain portions of the road. It is true that the above may also be referred to section 12, of the same act, which puts a time limit upon the completion of the road between Minneapolis and St. Cloud. But the act of 1865 repealed that part. And when it is considered that the Minneapolis & St. Cloud Railroad Company never, through its original incorporators, while it existed in name, caused a spade to be driven into Minnesota soil to carry out this contract; that its successor, the Great Northern Company, never in fact built for its own use a mile of this road; that it now operates the only portion of the line, from St. Cloud via Hinckley to Duluth, ever built, under a lease from the St. Paul, Minneapolis & Manitoba Railroad Company, and that for over 25 years this charter slept in the cemetery of dead legislation, it would puzzle the most astute to determine just when defendant's rights ever vested in any section of that road. It certainly never vested until after the General Laws of 1874, for the Hinckley branch was built as late as 1879, if not by, at least for, the St. Paul, Minneapolis & Manitoba Company.

The defendant's counsel insist, however, that even although section 17 of the act of 1856 reserved to the state the right to amend that act, yet, as no such reservation is contained in the act of 1865, it follows

that the act of 1865 is not subject to amendment. They rely upon the case of New Jersey vs. Yard, 95 U. S. 104 (24 Law Ed. 352). That case decides that reservations of the right to repeal found in statutes are binding on succeeding legislatures so far as they choose to adopt them; "and a legislative contract may be made which is not repealable if the legislature so intend," and that "it is therefore, in every case, a question whether the legislature making the contract intended that the former provision for repeal or amendment should become a part of the new contract by implication."

Now in New Jersey vs. Yard there ~~might~~ may be found reasons to hold that the contract made under a supplement to or amendment of a former law was intended by the parties to be irrevocable. Here there is absolutely no reason whatever to suppose that the legislature of 1865 intended to do more than amend and add to the former act in certain particulars and ~~had~~ have the amended act, including section 17, remain as the charter of this company. No other holding is possible. Sectin 17 is as much a part of the act of 1865 as it is of 1856. (Morawetz Corp., 2d ed., sec. 11012.) The New Jersey case and the case at bar in their facts are as wide apart as the poles.

While I need not place this decision upon this ground, it is the law that "a grant to a corporation of the right to consolidate with other companies means, in the absence of an express provision to the contrary, that it may form a consolidated company, subject to all the general laws in force at the time of the consolida-

tion." (Morawetz, sec. 948; St. L. & I. M. & S. Ry. Co. vs. Berry, 113 U. S., 465-476.) Which means that, even regarding the right to consolidate as indefeasible, it takes effect as of the time of consolidation, and does not relate back to the date of the charter. It may be also observed that neither the law of 1874 nor 1881 prohibits consolidation generally. It merely regulates its exercise and restricts it to lines non-parallel and non-competing. With this in mind, the case is clearly within the rule in C., M. & St. P. Ry. Co. vs. Minnesota, 134 U. S., 466. There a right, equally valuable, to fix tolls, contained in a charter, wherein was reserved no power to amend, etc., was held subject to legislative control.

Being entirely satisfied that defendant's charter comes within the exception and is not within the rule laid down in the Dartmouth college case, it would be mere affectation on my part to review the many cases cited to me as bearing upon that decision. Suffice it to say there is no disagreement between court and counsel in that regard. I have applied to this charter the rules of construction which are well settled. Where doubts have arisen I have resolved them, as is my duty in such case, in favor of the state.

The conclusion I have reached, I believe, is not alone strictly legal, but is to the very best interest of the State of Minnesota and of all the states crossed by these roads, and also in the true interest of the defendant itself

I am therefore constrained to hold that the charter of the defendant, the Great Northern Railway company, does not, either expressly or by necessary implication, authorize the consolidation proposed in the answer to be made with the Northern Pacific Company when reorganized.

That if said charter ever contained such authority it was subject to amendment by the legislature of Minnesota, and that it has been amended by the general laws now in force so as to revoke the power.

KELLY, J.

W. W. Keen
atty & counsel
for appellt.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 768

THOMAS W. PEARSALL,

Appellant,

vs.

THE GREAT NORTHERN RAILWAY COMPANY,

Respondent.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

Brief for the State of Minnesota

W.

Attorney-General.

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KELLY, J.

W. W. Cox
Atty Genl
for Appellt

Office Supreme Court U. S.
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JAMES H. MCKENNEY,
CLERK.

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H. W. CHILDS,

Attorney General of the State of Minnesota.

DISPATCH JOB PRINT, ST. PAUL, MINN.

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BRIEF OF ATTORNEY GENERAL OF MINNESOTA.

In view of the great importance of the question involved in the above entitled cause as *amicus curiae*, and with consent of the parties to the record, the undersigned, on behalf of the State of Minnesota, respectfully submits the following argument for the consideration of the Court.

ARGUMENT.

I.

The Great Northern Railway Company, incorporated as the Minneapolis & St. Cloud Railway Company, was created by Spec. Laws 1856, chap. 160, and authorized to locate, construct, maintain, use and operate, "a railroad with one or more tracks or lines of rails, from a point to be selected by this company in Minneapolis, * * * by the most feasible and practicable route

to St. Cloud * * and also a main line of railroad by way of Mille Lac to a point at or near the mouth of the St. Louis river. * * *"

It was authorized by the said act "to connect its road by branches with the road of any other railroad company or companies in the territory or future state of Minnesota," then chartered or that might thereafter be chartered; or "to become part owner or lessee of any railroad in said territory."

Permission was granted to any company organized under the laws of the territory or future state "to connect its road with the road of said company," and with the consent thereof become part owner or lessee thereof," or of any of its branches; or any portion thereof, situated in the said territory.

It was vested with the usual power of eminent domain and authorized to acquire by condemnation or otherwise for the purpose of its business a right of way two hundred feet in width.

It acquired an authorized capital stock of $30,000,000, and the right to borrow money and issue bonds. Provision was made for the manner of the issuance of stock, the amount required to be paid by the purchaser thereof, the election of officers, and the assessment of stock.

The corporation was authorized to cross public bridges and highways and to contract with other corporations with a view to crossing the roads thereof with which its own lines would come in contact.

Section 12 provided as follows:

"And the said corporations are hereby authorized and empowered to connect with any railroad running in the same direction with this road, and where there may be any portion of another road which may be used by this company; this company shall not be bound to build such portions of road so long as they may use the portions of any other road which may answer the same purpose."

Section 17 is as follows:

"This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly, in any manner not destroying or impairing the vested rights of said corporation."

The foregoing are all the rights, privileges or franchises conferred upon the company by the express terms of the original act, and may be summed up as follows:

The right,

1. To be a corporation and have a seal.
2. To construct and operate prescribed lines of road.

3. To connect any portion of its lines with another road in the territory.

4. To become part owner or lessee of another road in the territory or future state.

5. Of eminent domain.

6. To have a capital stock of $30,000,000.

7. To borrow money and issue bonds.

8. To cross public highways and bridges and other roads.

9. To adopt as its own upon terms any portion of the line of another road running in the same direction.

In 1864, sections 1, 2 and 3, the charter act were amended (S. L., c. 5) but the first and third sections of the amendatory act were repealed in 1865, and section one re-enacted. (S. L., c. 4.) By the second section the line of road prscribed in the original act was so changed as to be authorized to construct a road running from Minneapolis to St. Cloud and from St. Cloud to Lake Superior, and a branch line from St. Cloud to some point on the Minnesota river.

Section 3 of said chapter 5 amended section 12 of the original act so as to read as follows:

"Sec. 12. The said corporation is hereby authorized and empowered to connect with or adopt as its own, on such terms as may be agreed upon between the parties or companies interested, any other railroad running in the same general direction with either of its main lines, or any branch road which said corporation is authorized to construct, and where there may be any portion of another railroad which may be so used by this company or corporation, it shall not be bound to build such portion of its own road or branches, so long as it may use the portion of any other road which may answer the same purpose."

Section 8, so far as material, provided as follows:

"The said the Minneapolis & St. Cloud Railroad Company, and each of its branches being organized as aforesaid, shall have power to consolidate the whole or any portion of its capital stock, with the capital stock or any portion thereof, of the road or branch road of any other railroad corporation or company, having the same general direction or location, or to become merged therein, by way of substitution, upon such terms or conditions as the two companies may agree, by the consent of a majority of the stockholders of each company."

Section 12 provided as follows:

"The Minneapolis & St. Cloud Railroad Company, and each branch thereof having a separate organization as above provided for, may consolidate the whole or any portion of its main lines

or branch railroads and all the property, rights, powers, franchises, grants and effects pertaining to such roads, with the rights, powers, franchises, grants and effects of any other railroad company either within or without this state, upon such terms and conditions as such company or branch organization, or a majority of the directors thereof, may respectively agree, and the railroad company in which such railroad shall become vested by such consolidation, shall thereafter hold and enjoy all rights, grants, and powers and franchises in respect to such which the company or branch possessed before the consolidation, but the said Minneapolis & St. Cloud Railroad Company or branch organization thereof shall remain vested with all its other rights, powers, privileges and franchises."

In 1869, the act of 1856 was further amended so as to authorize a change in the name of the corporation and the construction of a line "from St. Cloud up the Sauk Valley to some point upon the St. Paul & Pacific Railroad, or to some point on the Red River of the North, by way of Alexandria." (S. L. 1869, c. 53.)

By a resolution of the Board of Directors of the Company, adopted on the 16th day of September, 1889, its name was changed to the Great Northern Railway Company.

II.

POSITION OF THE PLAINTIFF STATED.

1. The act of 1856 does not contemplate consolidation with parallel or competing lines.

It has always been the policy of the state to forbid such consolidations, as witness in evidence thereof the following statutes:

It is provided by Gen. Laws 1874, chap. 29, sec. 1, that:

"No railroad corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with or lease or purchase the works or franchises of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line; and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues."

It is provided by Gen. Laws 1881, Chap. 94, that:

"Section 1. Any railroad corporation, either domestic or foreign, whether organized under a general or by virtue of a special charter, may lease or purchase, or in any way become owner of

or control, or hold the stock of, any other railroad corporation, when their respective railroads can be lawfully connected and operated together so as to constitute one continuous main line, with or without branches."

"Sec. 2. Any railroad corporation whether organized under a general law or by virtue of a special charter of the state or territory of Minnesota, or under the laws of any other state or states or territory, whose lines of railroad now or hereafter constructed within or without this state can be lawfully connected and operated together to constitute one continuous main line, with or without branches, so as to admit of the passage of trains over them without break or interruption, may consolidate their stock and franchises upon such terms as may be agreed upon, so as to become one corporation by any name by them selected. * *

"Sec. 3. No railroad corporation shall consolidate with, lease or purchase, or in any way become owner of, or control any other railroad corporation, or any stock, franchises, rights of property thereof, which owns or controls a parallel or competing line."

It were impossible to go astray as to the intent of the legislature in the enactment of the foregoing provisions. That legislation means, or it means nothing, that parallel and competing lines of railroad shall be kept distinct and apart in all their business affairs; that no relationship should exist between them tending in any respect to dampen, modify or affect the spirit of competition incident to the rivalry of competing and parallel lines of road. The purpose is plain; too plain to be defeated by any play upon words. When the intention of the legislature is manifest, it must govern.

"It is indispensable to a correct understanding of a statute to inquire first, what is the subject of it, what object is intended to be accomplished by it. When the subject matter is once clearly ascertained and its general intent, a key is found to all its intricacies;—general words may be restrained by it, and those of narrower import may be expanded to embrace it to effectuate that intent. When the intention can be collected from the statute words may be modified, altered or supplied so as to obviate any repugnancy or inconsistency with such intention." (Suth. on Stat. Const. 3218.)

Said Mr. Justice Field in the Eureka Case, 4 Sawyer, 302:

"Instances without number exist where the meaning of words in a statute has been enlarged or restricted and qualified to carry out the intention of the legislature. The inquiry, where

any uncertainty exists, always is as to what the legislature intended, and when that is ascertained it controls."

The Minnesota statute of 1874 is not only aimed against the consolidation of the "stock, property or franchises," and the lease and purchase of the "works and franchises" of parallel or competing lines, but it also prohibits one road from controlling another. The exact words are: "no railroad corporation * * shall * * in any way control any other railroad corporation owning or having under its control a parallel or competing line." The words "in any way control" must be construed as invested with a meaning sufficiently broad to reach any case of business arrangement or relationship between roads tending to destroy competition. The manner or form in which that result is sought to be attained is not of the slightest importance; it is enough to know that it will tend to destroy competition. No more flagrant instance of the evil sought to be circumvented by the statute can be instanced than that presented by the case at bar. If the allegations of the bill disclose the real facts, or an approximation thereto, an arrangement is about to be effected between two of the greatest railroad corporations in the Northwest, which can only result in the complete stifling of competition and consequent loss to an immense business patronage. That those corporations are "parallel and competing" within the meaning of the statutes of Minnesota cannot be successfully denied.

The case of Louisville Rd. Co. vs. Commonwealth, 31 S. W. R. 476, decided by the Court of Appeals of Kentucky, is instructive. There, as here, was a threatened consolidation of companies. The constitution of that state prohibited consolidation by one company with another "owning a parallel or competing line." The lines proposed to be consolidated were no more parallel, in a physical sense, than the roads in question; if, indeed, they were as much so.

Adverting to the constitutional provision, the court say:

"Section 201 in plain terms makes it unlawful for any two or more railroad companies owning parallel or competing lines or structures to consolidate their capital stock, franchises or property, or to pool their earnings in whole or in part, or for one of them to acquire, by purchase or lease, property or franchises of the other, it matters not whether the purchase be made at a voluntary or judicial sale, it being the manifest purpose to inhibit one such company acquiring, controlling or operating the road of another in any manner or to any extent whatever; and, to foster competition and effectually forestall and prevent

monopoly in the business of railroad transportation, framers of the constitution made that inhibition applicable, not merely to the case of competing, but, as well, to that of parallel lines, which, though not always competing lines, might become so by construction of a branch of one to a point on the other. For, obviously, the word 'parallel' was not used according to its strictly accurate meaning of two railroads constructed equidistant apart throughout their whole extent, which would be impracticable, but in the sense of two conforming in their general direction."

The court, after enumerating the several lines involved, continues:

"The effect of acquisition by the Louisville & Nashville Company of these roads will be absorption of an entire system of parallel and competing lines about 400 miles in length, and substitution of a monopoly of railroad transportation. And in view of the enormous sum—$4,500,000—paid or agreed to be paid by the Louisville & Nashville Company for the capital stock of the other companies, being the major part thereof, and for the mortgage securities mentioned, it would be idle to say it does not intend to have the power to take possession and control of, and ultimately purchase and own, the whole franchises and properties."

Such being their character, the defendant company is prohibited by the law of 1874 from entering into any agreement or arrangement with the other of the nature disclosed by the pleadings.

The law of 1881 does not differ in any essential respect from that of 1874. It certainly is not an abridgement of the earlier law. We there discover the same prohibition against the "control of any other railroad corporation or any stock, franchises, rights, or property thereof, which owns or controls a parallel or competing line." (Sec. 3.) Moreover, the act is characterized by a guarded use of language in conferring upon corporations the privileges therein granted.

Those privileges can be enjoyed, it must be noted, only by those roads which "can be lawfully connected and operated together so as to constitute one continuous main line."

In this connection it may be suggested that the act of 1881 applies to companies whether organized under a general law or "by virtue of a special charter of the state or territory of Minnesota." (Sec. 2.)

The vice of such consolidation was, in principle, as manifest in 1856 as it is in 1895; and it will not be presumed that the

legislature then sought to contract away the right of regulation in so important a matter, in the absence of express terms evidencing such intention. The right to consolidate does not carry with it the right to do so against a manifest, though an unexpressed, policy of government. The policy of the state on the subject is manifest in the first general railroad law adopted by it, that of 1858, chapter 70, section 21.

The first paragraph of it, which has never been changed by subsequent legislation, is as follows:

"That whenever the lines of railroad of any railroad companies in this state, or any portion of such lines have been or may be constructed so as to admit the passage of burden or passenger cars over any two or more of such roads continuously without break or interruption, such companies are hereby authorized to consolidate themselves into a single corporation in the manner following, etc."

That having been the law when the amendment of 1865 relied on by the defendant was enacted, the amendatory law, if it may properly be deemed to confer any right whatsoever in such regard, will be interpreted in the light of the policy expressed in the general law.

In this respect we are ably supported by the case of State v. Vanderbilt, 37 Oh. St. 590. That was a thoroughly argued and well considered case, and involved a statute almost identical with our own.

The court say:

"2. But there is another view of this case to which I assent, and that view leads to the same result. It is in respect to the situation of these roads, and the relation they bear to each other, without special reference to the title by which they are held; and this presents a question of mixed law and fact. It is admitted in the agreed statement, 'that for many years last past, a very large commerce has existed between the portions of the United States lying southerly, southeasterly and southwesterly of Cincinnati, on the one hand, and the regions conveniently reached by the commerce of Lake Erie, and of the great lakes connected therewith on the other hand. That the course of this commerce has been such that goods, wares and merchandise in large amounts have been brought to the City of Cincinnati by the transportation lines upon the Ohio river, and by the railroad lines converging at Cincinnati, and the same has been transported by the railroads running through the state of Ohio to points upon Lake Erie, and thence transported by the way of the lakes, and the railroads running from cities upon the lakes, to the At-

lantic seaboard and the Northwestern states. That owing to the great competition existing between the transportation lines upon Lake Erie, the rates of transportation of merchandise from either Cleveland, Sandusky or Toledo to points upon the said great lakes, except Lake Erie, either easterly or westerly, from the said cities, have been generally the same to any one of such points, notwithstanding the difference as to distance in favor of either of the said cities; so that merchandise going from either of said cities through the said lakes, and destined to any point, either upon the Atlantic seaboard or in the Northwestern states, or any intermediate points east of and including Buffalo, generally paid the same rates for transportation upon the lakes, whether they were shipped from either Cleveland, Sandusky or Toledo. That previous to the 8th day of July, 1881, there was an active competition between the aforesaid Cleveland, Columbus, Cincinnati & Indianapolis Railway Company, and the aforesaid Cincinnati, Hamilton & Dayton Railroad Company in respect to the said transportation business from Cincinnati to points upon Lake Erie, and great rivalry existed as to the obtaining and conducting of such transportation business. That the said railroad companies respectively connected the said city of Cincinnati with the ports of Cleveland and Toledo on Lake Erie.

"The Cleveland, Columbus, Cincinnati & Indianapolis Railway and the Cincinnati, Hamilton & Dayton Railroad, with their leased lines, constitute two great arteries of trade, both commencing on the Ohio river at Cincinnati, meeting at Dayton, and extending thence to Lake Erie, one terminating at Cleveland and the other at Toledo. The attorney general says, and the record supports the statement, that these roads are 'for sixty miles lying parallel and near to each other.' That they are, indeed, in the largest sense, parallel and competing roads, seems to be beyond dispute, and it may be fairly inferred from the record that a leading object in making the consolidation was to destroy that competition.

"That being true, the lines of these roads are not, in my judgment, 'so constructed as to admit the passage of burden or passenger cars over two or more of such roads continuously,' within the proper meaning of section 3379. That the mere physical ability to pass cars from one road to the other satisfies the statute, is a construction of it which is wholly inadmissible, for the provision requiring such connection would be without meaning. In imposing that restriction upon consolidation the legislature intended, not merely that the physical fact should exist, but that

such consolidation should only be made for the very purpose of passing freight and passengers over both lines, or some material parts thereof, not necessarily in a direct or straight line, but continuously.

"Counsel for the defendants insist that in construing statutes regard must be had to the words. No doubt that is true; but it does not follow that regard is to be had to nothing else. Mr. Bishop says that courts 'do not close their eyes to what they know of the history of the country and of the law, of the condition of the law at a particular time, of the public necessities felt, and other like things.' Bishop's Stat. Cr., Sec. 77. In Logan. v. Courtown, 13 Beav. 22, 29, it was said that in construing a statute, regard must be had to 'the words in which it is expressed, applied to the facts existing at the time.' In Brewer v. Blougher (14 Pet. 178, 179), Taney, C. J., said: 'It is undoubtedly the duty of the court to ascertain the meaning of the legislature from the words used in the statute, and the subject matter to which it relates; and to restrain its operation within narrower limits than its words import if the court are satisfied that the literal meaning of its language would extend to cases which the legislature never designed to embrace in it.' And see Cooley's Con. L. (4th ed.) 79; Maxwell on Stats., 16-25.

"Having regard to the language of this statute, in the light of such aids as are here indicated, I am satisfied the legislature never intended that railroads situated as these are should be regarded as constructed for the carriage of freight and passengers continuously, in the manner contemplated by the section. Indeed, each of these consolidating companies had a line for the carriage of freight and passengers from Cincinnati to Lake Erie, 'continuously, without break or interruption,' and the policy of the country in general, indicated in constitutional and statutory provisions, has long been opposed to the consolidation of roads bearing such relation to each other, and this strengthens the belief that these companions are not within the section in question. Consolidation for the transportation of freight and passengers continuously, is a thing which the legislature might well desire to encourage, as it may be advantageous alike to the public and the companies; but corporations have power only as granted by the general assembly; and where companies situated as these are, being parallel and competing, claim that authority to consolidate has been granted to them, they must be able to point to words in the statute which admit of no other reasonable construction, for it will not be assumed that the law-making power has authorized the creation of a monopoly so detrimental to the public interest. But the statute contains no such words."

That the general law will operate to amend or modify the terms of a special law when that result is clearly intended is perhaps too well supported to require a citation of authorities here.

Attention is, however, called to the following cases:

In Duran v. N. H. & N. Ham. Co., 42 Conn. 222, the court considered the effect of a general law upon the charter of the defendant company. The charter provided for its amendment at the pleasure of the legislature. An act was subsequently passed requiring every railroad company to fence its tracks, and it was held that the defendant was bound by it, although its charter was silent upon the subject of fencing, and it was not referred to in the later law. The language of the court is:

"This provision of the statute applies as well to the defendant as to any other railroad company, and pro tanto operates to modify its charter, which by its terms is at any time open to legislative alteration."

In State, Morris & Essex Rd. Co. v. Commrs, 37 N. J. L. 228, the charter of the company provided for exemption from taxation, to a certain extent. A subsequent act provided for a different method of taxation and repealed all acts or parts of acts inconsistent therewith. No reference was made to the defendant's charter. The court say:

"There is no rule of law which prohibits the repeal of a special charter by a general law. The Mechanics & Traders' Bank v. Bridge, 1 Vrom. 112. Nor is there any principle of law forbidding such repeal, without the use of express words declarative of the legislative intent to repeal the earlier statute. Repeals by implication are not favored. But the question is always one of legislative intent and the intent to abrogate the particular enactment in an earlier statute by a general enactment in a later statute, is sufficiently manifested when the provisions of the two enactments are so inconsistent that they cannot stand together * * * The language of this section, that 'all taxation upon all railroad companies occupying and using roads in this state, whether as lessees or otherwise, shall hereafter be made as follows,' is so general and comprehensive that the legislative intent is left in no doubt. It includes in its provisions every company operating a road within the state, either under a charter for that purpose, or as lessee, or under any other arrangement, as a subject for taxation, and prescribes an uniform rule for imposing said taxation. An uniform rule must necessarily be the only rule applicable to the entire class of subjects embraced within the purview of the statute. When the legislative intent

is clearly manifested to establish the only rule that should govern it operates by necessary implication as a repeal of all prior statutes in which a different rule was adopted."

See further:

Endlich Dist. of Stat. sec. 231.

Morawitz on Corp. 2d ed. sec. 1110.

Union Improv. Co. v. Com., 69 Pa. St. 140.

Bangor Rd. Co. v. Smith, 47 Me. 35.

Roxbery v. Boston Rd. Co., 6 Cush. 431.

Price v. City of St. Paul, 19 Minn. 267.

State v. Klein, 22 Minn. 329.

The power of the legislature to repeal, alter or amend the charter under a reservation of this character is not exhausted after having been once exercised, but continues in force until extinguished by a repealing act.

Morawitz on Corp., 2d ed., sec. 1112.

New York v. Yard. 95 U. S. 104.

4. The defendant not having consolidated with another company prior to the enactments of 1874 and 1881, no rights as to consolidation had vested in it which were not subject to amendment by the legislature. *This is all the more true in view of the fact that the right to consolidate at all was not conferred until the passage of the act of 1865.* It would be preposterous to undertake to base its rights upon the terms of the original act.

5. The incorporating act, if authorizing consolidation with a parallel line, must be deemed to have contemplated the lines authorized to be constructed by the defendant. It having sold and conveyed away all the road it ever constructed, the consolidation of leased lines is wholly unauthorized.

6. As the defendant operates only lines organized under other charters than its own, it can, if it now has the right to exercise any of the functions of a railroad corporation whatever, only operate them according to the powers conferred by the laws of their creation. Properties acquired by lease of the St. Paul, Minneapolis & Manitoba Ry. Co. cannot be used by the defendant otherwise than they could be used by the lessor. If any other view is to obtain, then the statute may easily be evaded and a consolidation accomplished indirectly when it could not be directly done. It is manifestly repugnant to the letter and spirit of our laws to permit a corporation, which, like the defendant, has never for a day during thirty-four years discharged its duties to the state as prescribed and contemplated by the act which gave it life, to serve as an instrumentality for the evasion of the

law by other companies. The Manitoba Company would not for an instant claim, or attempt to exercise the right of consolidation, except as authorized by its charter or by the general law. Whence is derived the authority to effect consolidation with the Northern Pacific, either by reason of a lease of property or the ownership of stock?

This view is sustained by State v. Vanderbilt, supra. In that case consolidation was attempted between the lessees of several lines. The court held that it could not be thus effected and say:

"Clearly, in our opinion, there can be no consolidation unless the companies whose lines form the connection are consolidated. But here it is plain that the connection is formed and only exists by the lines of the lessors, and that as to the lessor companies there is no consolidation. * * * Moreover, the statute which makes ample protection of stockholders of the consolidating companies, makes none for the protection of stockholders of the lessor companies. Plainly, at it seems to us, there is no consolidation of the lessor companies; and it is equally clear that the right to consolidate, based on the consolidating companies' ownership of the leased roads, is wholly untenable. True, under the former as under the present statute, the power to consolidate may in general have been in abeyance in the lessor company, but it was the lessor's voluntary act if its power in this respect was suspended; and it is equally true that upon the termination of the lease for any cause, the power to consolidate would revive with all its force. * * * But the title of a lessee is very different (from that of a mortgagee) and the road so leased to it is not its line of road, in the sense of the statute, but the road of the lessor company. Indeed, if we are permitted to depart from the plain words of the statute, and determine that when the control of a railroad by another company is permanent in its character, such ownership is sufficient to satisfy the requirement, it is difficult to see why a company having no other than leased lines, or one having a permanent running arrangement with another, may not come within the provision. I am fully persuaded that nothing of the sort was contemplated by the legislature." (p. 640.)

This case was followed in State v. A. & N. Ry. Co., 24 Neb. 158.

The case of Louisville Rd. Co. v. Commonwealth, already cited, is instructive in this respect.

"That the legislature did not intend to give the power in question is made further manifest by 'An act to authorize railroad companies to make certain contracts with each other,' approved January 22, 1858, which provides that all railroad companies

in this state shall have power and authority to make with each other contracts of the following character: (1). For the consolidation of either the management, profits, or stock of any two or more companies, the roads of which are or shall be so connected as to form a continuous road; (2) for leasing of the road of one company to another, provided, the roads so leased shall be so connected as to form a continuous line. The construction of that act was involved in the case of Hancock v. Railroad Co., 145 U. S. 409, 12 Supt. Ct. 969, the supreme court using this language: "The evil which was intended to be guarded against by this limitation was the placing of parallel and competing lines under one management and the control by one company of the general railroad affairs of the state through the leasing of roads remote from its course, and with which it has no physical connection.' Though thirty-eight years since the passage of the act of 1856 and thirty-six years since the act of 1858 had elapsed when this action was commenced, the Louisville & Nashville Company never before claimed or attempted to exercise the right to purchase and hold parallel and competing lines, except about 1878, when it purchased the road from Louisville to Cecilia Junction, which was held only a short time, and then sold to the Chesapeake, Ohio & Southwestern Company. To construe the statute as counsel urge, we must disregard the established rule that franchises and privileges not in clear and express terms granted are to be taken as withheld, and assume the legislature granted the extraordinary and dangerous privilege in intentional disregard of public policy, and that it deliberately betrayed the state of Tennessee, which had given state aid to the Louisville & Nashville Company, when it was not, and upon faith it would never be, invested with power so detrimental to its own interests and that of its citizens."

The original act permits the company to merely make connections with another company. This clearly does not imply authority to consolidate. As said by Chief Justice Waite in At., Top. & S. F. Rd. Co. v. Den. & N. O. Rd. Co., 110 U. S. 67, in construing a constitutional provision providing that "every railroad company shall have the right with its road to intersect, connect with or cross any other road."

"The language of the constitution is that roads may intersect, connect with, or cross each other. This clearly applies to the road as a physical structure, not to the corporation or its business."

III.

Attention has already been called to the fact that the legislature reserved the right of amendment. At the time of the passage of the law of 1874 not an act had been done or performed by the company which the legislature was bound to respect, because it had slept during the entire period. Certainly, then, the way was clear for such amendment. What the legislature intended to do by and through the act of 1874 will best be ascertained by regard to the conditions then existing. That act, it will be conceded, is framed in the broadest and most comprehensive terms. Many of the railroad companies existing in this state in 1874 were existing under special laws. The reason of the prohibition recognizes no distinction between companies based upon the manner of organization. The evil aimed at attaches equally to a company organized by special charter as to one organized under the general law. No reason can be urged or conceived of why the legislature should intend an exemption of the former class. The rule, therefore, that a general later law does not abrogate an earlier special one by mere implication is inapplicable to the law of 1874.

And this view is greatly strengthened when regard is had not only to the uniform policy of the state touching railroad companies, but likewise to the history of railroading the country over, especially during the earlier years of that history.

Prior to 1860 the projection of great lines involving the expenditure of many millions, and traversing hundreds of miles in their routes, were deemed more fitting the attention of idle dreamers than that of careful, prudent men of affairs. When Minnesota, in territorial days, bestowed charters for the construction of railroads, the legislature, undoubtedly, in providing therein for the connection and consolidation of lines, had in mind the advantages to accrue from the connection of separate lines with a view to the establishment of continuous routes between distant points. And this view finds great support in the general railroad law enacted in 1858, to which attention has already been called. That law evinces the length to which the state was prepared to go upon the subject of consolidation of lines. It must not be forgotten that neither the law of 1874 or 1882 prohibits consolidation. It merely restricts the right to consolidate with non-parallel and non-competing lines. The state's contention is that general terms authorizing consolidation are not enough, as held in State v. Vanderbilt, supra, to authorize consolidation between competing lines.

IV.

That a legislative grant to a corporation in which there is no reserved power of amendment, is a contract vesting indefeasible rights in the grantee after acceptance, is too well settled by authority to now admit of controversy. While admitting the rule as thus stated, it is the contention of the state that the case at bar falls within the exception. We further contend that the granting act affords intrinsic evidence of the intention on the part of the legislature to reserve to itself powers as broad as were reserved in any grant involved in any of the cases which may be brought to the attention of the court.

V.

THE TRUE MEANING OF SECTION 17.

At the outset it is well to bear in mind the view taken by the legislature of its powers under this section. It had been declared in its own terms "a public act," and "subject to amendment by any subsequent legislative assembly." Too great weight must not, of course, be placed upon a legislative construction of an earlier law, although it is certainly entitled to consideration. (Suth. Stat. Const., 229.) In determining the meaning of particular words in the statute, if any wise obscure, the courts are prone to give much weight to contemporaneous construction, as expressive of the meaning in which they were employed. (Suth. Stat. Const., 402.) For this reason the fact that the legislature on several occasions, beginning with the year 1865, assumed and exercised the right of amendment in material respects, is of no little significance now. It implies that the terms of the grant were not then deemed beyond the power of amendment by those who constituted "legislative assemblies" during that period.

But the material question is, what did the legislature intend by the language employed in section 17?

Closely regarding those terms, the following conclusions are unavoidable:

1. The act was declared a public act.
2. It was to be subject to amendment.
3. Rights vested in the corporation were not to be impaired or destroyed.

What reasons conduced to the incorporation of that section in the act? Must we not presume that the legislature acted with a view to the state of the law at that time, as construed by

the courts? No doctrine was then better established by the American courts than that a private act conferring franchises on a corporation was, in the absence of reserved powers, a contract which could not be altered or repealed by subsequent enactments. The Dartmouth College Case, famous among adjudications by reason of the able judges who wrote the opinions therein, and the eminent counsel who participated in it, and the vast importance of the doctrine announced, had then been decided for more than thirty-seven years. Mr. Justice Story had emphasized the fact that if legislatures would avoid in their special charters the force of that doctrine, they must reserve to themselves the power of amendment. The legislature must not be presumed to have been ignorant of that great decision. A hasty perusal of the volumes of Special Laws passed in this state from 1853 to 1856 inclusive, will disclose that not in the charter of the defendant alone were those words in substance used. They are met with in several places, and therefore plainly indicate with the utmost force, that the legislature thereby sought to reserve to itself some substantial purpose. To construe them into a meaningless jingle of terms is to pervert their natural force and to rob the legislature of an important power which it studiously sought to preserve.

The legislature was most prudent and cautious in the use of terms. The act was declared to be a public act. It was not to be a private act, like that which conferred the charter in the Dartmouth College Case, and as are many of the acts involved in cases reported in the books. But, for some purpose known to the legislature, it was to be a public act. It was to be an act of public concern equal in rank to a general law upon the subject. Like the general enabling act providing for the incorporation of companies, it was to be subject to amendment. In this respect it was not to be distinguished from the general law. The only respect indeed, in which any distinction could be drawn between it and the general law is the fact that it is restricted in its scope to a single corporation. Otherwise, and for all the intents and purposes of legislation, it was to be like a general law.

It was to be amendable; but in no manner so as to disturb the vested rights of the corporation. What rights were intended? It is said that it contemplated every right which the corporation was by its terms authorized to exercise. What is there left then to amend?

We cannot overestimate the gravity of the question. Here is a statute bearing upon a matter of the utmost importance to the

people of the state. One construction saves to that people a most valuable right; impedes the defendant in the exercise of a power which is deemed greatly prejudicial to the public welfare. Another construction denies the public authority, and countenances a transaction which is regarded only with the deepest concern among thoughtful men, not only in this state, but in the other states traversed by these systems of railway.

Which construction shall prevail; the one of common sense, and in the public interest, or the one extorted by strained rules of construction and in the interest of the corporation?

Is the question of so much doubt that the books must be ransacked in order to solve it? Then shall not the doubt be resolved in favor of the people, rather than the corporation?

Rules of construction often serve a useful purpose to the court. They are the embodiment of wisdom; but their usefulness consists in the wisdom of their application. In the construction of statutes, it is a salutary rule that the intention of the legislature is to govern. When the meaning is apparent on the face of the statute, it is the only one that can be presumed to have been intended, and there is no room for construction. Nor is the legislature supposed to use words without meaning. Such a construction should be placed upon a statute, if possible, as will preserve all its terms. These are rules which are familiar to every lawyer, and are so simple and just as to receive the ready endorsement of the laymen. Content with them, we shall have little difficulty in gathering from section 17 the intention of the legislature. They easily lead the mind to a construction which preserves every word of the section and invests it with a significance of the highest importance.

In this connection, what is the meaning of the words "may be amended?" Are they used in a broad or a restricted sense? An authority which will not be disputed—the Century Dictionary—gives the following definition of the word "amend:"

"To make a change or changes in the form of a bill or motion, or a constitution; properly, to improve an expression or detail, but *by usage to alter either in construction, purport or principle.*"

If you alter a statute either by the elimination or repeal of any of its provisions, it is thereby amended. The history of legislation in this state is very instructive in this respect. The word "amend" has been used as synonymous with repeal times without number by our legislatures. In every volume of our session laws you will meet with provisions to the effect that a statute

is amended by striking out certain words, or often a section or sections. You will there meet with statutes whose titles employ the word amend, so as to imply the most radical alterations by repeal or modification in the body of the text.

The legislature reserved the right of amendment by any subsequent legislature. The word as thus used must be deemed to imply something more than a power to improve phraseology, or to amend in matters of form or procedure; it saved to "the subsequent legislative assembly" the right to alter or repeal, the right to change, modify or destroy the privileges conferred, and to impose other and more onerous duties and obligations as the legislature in its wisdom might deem advisable or expedient.

This construction is urged all the more confidently as it is sustained by both legal and literary authority. Article 5 of the Federal constitution provides for its "amendment." Article 14 of the state constitution provides that "whenever a majority of both houses of the legislature shall deem it necessary to alter or amend this constitution," etc. Will any one question the power to repeal any provision of either instrument under the power to amend or alter it? The further we search, the more firmly we shall be convinced that the word "amend" is generally employed as synonomous with repeal. An examination of the legislation of the territory of Minnesota in the years 1853, 1854, 1855 and 1856, will show a purpose almost without exception to reserve the power of amendment. The language in which such purpose is expressed is not at all uniform. At times it is the right to amend or alter; amend, alter or repeal; amend or modify. Many charters were conferred for the maintenance of ferries and it will be found that almost invariably the right of amendment was reserved, but great carelessness was displayed in the use of the language in which the reservation was expressed.

The supreme court of Massachusetts holds that the power to alter a charter includes the right to take away some of the powers granted by it, or to add new powers without which improvements of the greatest importance would be ultra vires.

Surely, it would be violative of every just rule of construction to place upon the word "amendment" as employed in section 17, a construction, in case of doubt, which tells against the state. The terms of a grant, as will be more fully seen hereafter, are to be construed strictly against the grantee. The reservation, then, so far as it extends, implies unrestricted action either in adding to or taking from the terms of the original grant. What was the extent of the reservation in the light of authority?

We shall proceed all the more safely if we keep in mind the following well established principles of law:

1. A contract in the form of a special law in which the legislature has reserved the power to amend, does not fall within the meaning of the Dartmouth College case.

2. A general enabling act is a special law to every company organized under it. State Bank v. Knoop, 16 How. 380.

3. Whenever the power of amendment is reserved in a special act, it does not imply the power to destroy or impair vested property rights.

4. With respect to the sacredness of vested property rights, companies are equally protected, whether formed under general laws or by special acts.

That the act of 1856 is not a legislative contract is the contention of the state.

It is essential that we start with a clear conception of what was involved in the Dartmouth College case. While the general doctrine therein stated had previously been announced by a Massachusetts court, that case will ever be regarded in the jurisprudence of this country, as the one great authority upon the subject of chartered vested rights.

There Mr. Wheelock had secured a charter from the King under the seal of the province of New Hampshire for the founding of the school. The pecuniary and other support of the institution came wholly from private sources. The trustees were created a body corporate with power for the use of the said college to acquire property. Wheelock was appointed president with power by his last will to name his successor. The charter was accepted and the property contributed for the enterprise was conveyed to it. The purposes of the incorporation were, as emphasized by the court, private and charitable. They were in no sense public, and in no wise served as a governmental agency.

"This," said Chief Justice Marshall, "is plainly a contract to which the donors, the trustees, and the crown, were the original parties. It is a contract made on a valuable consideration. It is a contract for the security and disposition of property."

(4 Wheat. 643.)

That was a case where the crown upon consideration, in a purely private matter, without reservation, had entered into an indefeasible contract with a private citizen. Judge Story, in his concurring opinion, said:

"The rights legally vested in a corporation cannot be controlled or destroyed by any subsequent statute, unless a power

for that purpose be reserved to the legislature in the act of incorporation." (Page 708.)

And again he said:

"In my judgment, it is perfectly clear that any act of a legislature which takes away any powers or franchises vested by its charter in a private corporation, or its corporate officers, or which restrains or controls the legitimate exercise of them, or transfers them to other persons, without its assent, is a violation of the obligation of that charter. If the legislature means to claim such an authority, it must be reserved in the grant." (P. 712.)

The great principle that a man shall not be deprived of his property without due process of law, had become deeply embodied in the common law long anterior to that decision. Wherever the common law extended, vested rights were sacred. An Empire might be rent asunder, yet was it a principle of that law that no vested rights should thereby be forfeited. (4 Wheat. 707; 9 Cranch. 50.) And all through the adjudications of this country runs the doctrine that vested rights are sacred. They can be disturbed only in those cases where the state in the just exercise of its police powers, requires it. Property rights, whether derived through the agency of corporate organization, or in the ordinary transaction between citizens, cannot otherwise be disturbed. It is not necessary to the protection of such rights that a corporation be organized under a special law; it is no less protected under a general enabling act.

A careful review of the cases in which the question of chartered vested rights has arisen, will show that the courts have nowhere declared a special law a contract, binding upon the state, save only where the legislature has omitted to reserve the power of amendment.

The effect of the decision in the Dartmouth College case was soon manifested in the constitution and statutes of many of the states. It is proper to say that the popular mind was startled by the doctrine that one legislature might tie the hands of a succeeding one; that it might by statutory provisions irrevocably bind the state, however inadequate the consideration, or outrageous the terms of the contract. And, therefore, wherever wisdom prevailed, constitutions and general laws provided that private charters should forever be subject to such amendments. Happily, the legislature of the territory of Minnesota in 1856, as well as in prior years, provided for such reservation. The views

of Mr. Justice Field in the case of Spring Valley Water Works v. Schottler, 110 U. S. 370, are pertinent here.

"The object of the reservation in whatever form expressed, was to preserve to the state control over the corporate franchises, rights, and privileges which in her sovereign capacity, she had called into existence. In other words, to enable her to annul or modify that which she had created. It was not its object to interfere with contracts which the corporation, when once created, might make, nor with the property which it might acquire.

"Such is the purport of our language in Tomlinson v. Jessup, 15 Wal. 454, where we stated the object of the reservation to be 'to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference;' and that, 'the reservation affects the entire relation between the state and the corporation, and places under legislative control all rights, privileges and immunities derived, by its charter, directly from the state.' * * *

"As thus seen, the reservation applies only to the contract of incorporation, to the corporate existence, franchises and privileges granted by the state. With respect to everything else, it gives no power that the state would not have had without it. Necessarily it cannot apply to that which the statute never possessed or created, and therefore could not grant. It leaves the corporation, its business and property, exactly where they would have been, had the supreme court held, in the Dartmouth College case, that charters are not contracts within the constitutional prohibition against legislative impairment. It accomplished nothing more, and any doctrine going beyond this would be subversive of the security by which the property of corporations is held, and in the end would destroy the security of all private rights. Behind the artificial body created by the legislature stand the corporators, natural persons, who have united their means to accomplish an object beyond their individual resources, and who are as much entitled, under the guaranties of the constitution, to be secured in the possession and use of their property thus held as before they had associated themselves together. Whatever power the state may possess over corporations in their creation or in passing or amending the laws under which they are formed and altered, it cannot withdraw them from the guaranties of the Federal Constitution."

ADJUDICATIONS IN STATES WHERE THE RESERVATION IS ADOPTED.

It will be instructive to ascertain the state of the law as illustrated by the decisions of the courts in those states where the power of amendment is reserved in general provisions.

The constitution of California contained a provision to the effect that general and special laws should be subject to amendment. The act of the legislature provided for the organization of water companies whose rates should be fixed by a board of commissioners appointed as follows: Two by the public authorities and two by the companies. If the four could not agree they were to select a fifth. The Spring Valley Water Works Company was formed thereunder. Subsequently the constitution was so changed as to provide for the fixing of rates wholly by the public authority. The court say:

"The Spring Valley Company is an artificial being created by or under the authority of the legislature of California. The people of the state, when they first established their government, provided in express terms that corporations other than for municipal purposes, should not be formed except under general laws, subject at all times to alteration or repeal."

The court then expressing itself almost in the language just quoted, continues:

"In California the constitution put this reservation into every charter, and consequently this company was from the moment of its creation subject to the legislative power of alteration, and if deemed expedient, of absolute extinguishment as a corporate body. * * * That it is within the power of the government to regulate the prices at which water shall be sold by one who enjoys a virtual monopoly of the sale, we do not doubt. That question is settled by what was decided on full consideration in Munn v. Illinois, 94 U. S. 113. As was said in that case such regulations do not deprive a person of his property without due process of law. What may be done if the municipal authorities do not exercise an honest judgment, or if they fix upon a price which is manifestly unreasonable, need not now be considered, for that proposition is not presented by this record. The objection here is not to any improper prices fixed by the officers, but to their power to fix prices at all. By the constitution and the legislation under it, the municipal authorities have been created a special tribunal to determine what, as between the public and the company, shall be deemed a reasonable price during a certain

limited period. Like every other tribunal established by the legislature for such a purpose, their duties are judicial in their nature, and they are bound in morals and in law to exercise an honest judgment as to all matters submitted for their official determination.* * * The constitution of California adopted in 1849 prohibited one legislature from bargaining away the power of succeeding legislatures to control the administration of the affairs of a private corporation formed under the laws of this state. Of this legislative disability the Spring Valley Company had notice when it accepted the privileges of the act of 1858, and it must be presumed to have built its works and expended its moneys in the hope that neither a succeeding legislature, nor the people in their collective capacity when framing a constitution would ever deem it expedient to return to the old mode of fixing rates, rather than on any want of power to do so, if found desirable. The question here is not between the buyer and the seller as to prices, but between the state and one of its corporations as to what corporate privileges have been granted. The power to amend corporate charters is no doubt one that bad men may abuse, but when the amendments are within the scope of the power, the courts cannot interfere with the discretion of the legislatures that have been invested with authority to make them."

Spring Valley Water Works Co. v. Schottler, 110 U. S. 370.

It will be noted, therefore, that the court not only asserts the power of amendment, but also the power of absolute extinguishment as a corporate body.

The following statute was enacted in South Carolina in 1841:

"It shall become part of the charter of every corporation which shall at the present or any succeeding session of the general assembly, receive a grant of a charter, or any renewal, amendment or modification thereof (unless the act granting such charter, renewal, amendment, or modification shall, in express terms, except it) that every charter or incorporation granted, renewed, or modified as aforesaid shall at all times remain subject to amendment, alteration, or repeal, by the legislative authority."

A railroad company was created by a special act, which did not except the company in the operation of the said general law. The act amending the charter of the company exempted the property from taxation during the continuance of the charter. Some years later the constitution of that state was so amended as to provide for a uniform taxation of all property, except

mines. The decision in Tomlinson v. Jessup, 15 Wall. 454, is exceedingly instructive.

"It is true that the charter of the company when accepted by the corporators constituted a contract between them and the state, and that the amendment, when accepted, formed a part of the contract from that date and was of the same obligatory character. And it may be equally true, as stated by counsel, that the exemption from taxation added greatly to the value of the stock of the company, and induced the plaintiff to purchase the shares held by him. But these considerations cannot be allowed any weight in determining the validity of the subsequent taxation. The power reserved to the state by the law of 1841 authorized any change in the contract as it originally existed, or as subsequently modified, or its entire revocation. The original corporators, or subsequent stockholders, took their interests with knowledge of the existence of this power, and of the possibility of its exercise at any time in the discretion of the legislature. The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise if the public interest should at any time require such interferences. It is a provision intended to preserve to the state control over its contract with the corporators, which without that provision would be irrepealable and protected from any measures affecting its obligation.

"There is no subject over which it is of greater moment for the state to preserve its power than that of taxation. It has nevertheless been held by this court, not, however, without occasional earnest dissent from a minority, that the power of taxation over particular parcels of property, or over property of particular persons or corporations, may be surrendered by one legislative body, so as to bind its successors and the state. * * * In these cases (cited by the court), and in others of a similar character, the exemption is upheld as being made upon considerations moving to the state which give to the transaction the character of a contract. It is thus that it is brought within the protection of the federal constitution. In the case of a corporation the exemption, if originally made in the act of incorporation, is supported upon the consideration of the duties and liabilities which the corporators assume by accepting the charter."

The state of Massachusetts enacted a general provision as follows:

"Every act of incorporation passed after the 11th day of March

in the year 1831, shall be subject to amendment, alteration or repeal at the pleasure of the legislature."

A company was organized by special act. Subsequent to such formation, the legislature incorporated another company and repealed the charter of the former company. In Grenwood v. Freight Co., 105 U. S. 17, in speaking of the terms of the reservation clause, the court say:

"It would be difficult to supply language more comprehensive or expressive than this;" and continues: "Such an act may be amended; that is, it may be changed by additions to its terms or by qualifications of the same. It may be altered by the same power, or it may be repealed. What is it may be repealed? It is the act of incorporation. It is this organic law on which the corporate existence of the company depends which may be repealed, so that it shall cease to be a law; (or the legislature may adopt the milder course of amending the law in matters which need amendment, or altering it, when it needs substantial change. All this may be done at the pleasure of the legislature. That body need give no reason for its action in the matter. The validity of such action does not depend on the necessity for it, but the soundness of the reason which prompted it. * * * The effect of the repeal of the statute is that it no longer exists; its life is at an end. Whatever force of law may be given to transactions into which the corporation entered and which was authorized by the charter, it can originate no new transactions dependent on the power conferred by the charter. If the corporation be a bank, with the power to lend money and to issue circulating notes, it can make no new loan or issue any new notes designed to circulate as money. If the essence of the grant of a charter be to operate a railroad and to use the streets of a city for that purpose, it can no longer so use the streets of the city and no longer exercise the franchise of running a railroad in the city.

"In short, whatever power is dependent solely upon the grant of the charter, and which could not be exercised by unincorporated private persons under the general laws of the state, is abrogated by the repeal of the law which granted these special rights.

"Personal and real property acquired by the corporation during its lawful existence, rights of contract, or choses in action so acquired, and which do not in their nature depend upon the general powers conferred by the charter, are not destroyed by such a repeal; and the courts may, if the legislature does not provide

some special remedy, enforce such rights by the means within their power. The rights of the shareholders of such a corporation, to their interest in its property, are not annihilated by such a repeal, and there must remain in the courts the power to protect those rights.

"And while we are conscious that no definition, at once comprehensive and satisfactory, can be here laid down of what those rights and powers are that remain in the stockholders and the creditors of such a corporation after the act of repeal, we are of opinion that the foregoing observations are sufficient for the case before us."

The weight of authority is overwhelming to the effect that such clauses of reservation save to the legislature power adequate to effect any modification in charter legislation it may be deemed advisable. But it was said in Greenwood v. Freight Co., supra, as it must always be said, that "property acquired by the corporation during its lawful existence, rights of contract or choses in action so acquired, and which do not in their nature depend upon the general powers conferred by the charter are not destroyed by such repeal."

The general doctrine now contended for is sustained by the following and other cases:

Railroad Co. v. Maine, 96 U. S. 499.
Sinking Fund Cases, 99 U. S. 700.
Railroad Co. v. Georgia, 98 U. S. 359.
Miners Bank v. United States, 1 Green (Ia.) 553.
McLaren v. Pennington, 1 Paige 107.
2 Kent. 306, 307.
Hamilton Gas Light Co. v. City of Hamilton, 146 N. Y. 258.
Crease v. Babcock, 23 Pick. 334.
Mayor v. Rd. Co., 109 Mass., 103.
Sheldon v. Ohio, 95 U. S. 342.
Bridge Co. v. U. S., 105 U. S. 470.
Shields v. Ohio, 95 U. S. 319.
Sioux City Ry. Co. v. Sioux City, 138 U. S. 98.

We have already suggested what seem to be cogent reasons for construing the term "amend" as employed in the Minnesota statute, as the equivalent of the words "amend or repeal."

But while compelled to admit the extent of such reserved powers under such a clause, it may be claimed by the defendant that the legislature of this state disclaimed by the very terms of section 17 an intention to save to itself so broad a power of amendment. Such an argument will be rested upon the effect

of the words "in any manner not destroying or impairing the vested rights of said corporation."

Stress may be laid upon the fact that it is the "rights of said corporation" which are not to be impaired. Looking ever so slightly beneath the surface of the question, it is at once evident that little significance is to be attached to the use of those words. We have already seen that property rights were safe. The word "corporation," as employed in the section, means the incorporators. This is so perforce of section 1 of the act wherein it is provided that the persons therein named "and all such other persons as shall hereafter become stockholders in the company hereby incorporated, shall be and are hereby made a body politic and corporate." "And the said corporation," to use the language immediately following, "may make and use a common seal," etc.

It is evident that the legislature clearly sought by the words of section 17 last quoted, to disclaim an intention to act unjustly toward the incorporators. To attempt the impairment of vested rights would certainly be an attempt to treat the company with injustice. If in place of the words used, the legislature had reserved the right to amend in any manner so that no injustice would be done to the corporation, the purpose would have been the same. If there is any difference in the meaning of the two expressions, the power of amendment in the latter case would be more restricted than in the former.

It so happens that we are afforded an analogous case of great weight upon the construction of such words in a reservation clause in the case of Railway Company v. Philadelphia, 101 U. S. 528.

The constitution of Pennsylvania provided that the legislature should have power "to alter, revoke or amend any charter of incorporation hereafter conferred by any special or general law, whenever in their opinion it may be injurios to the citizens, subject only to the condition that the alteration, revocation or amendment shall be made in such manner "that no injustice shall be done to the incorporators." The plaintiff company was subject by its charter to the payment of a tax or license fee of $30 per car to the city of Philadelphia for the use of its streets. By a subsequent act this fee was raised to $50. The court say:

"Power to alter, revoke or annul any charter of incorporation was vested in the legislature by express provision more than a quarter of a century before the defendant company was incorporated. * * * Charters of private corporations duly accepted, it must be admitted, are in general executed contracts, but the different provisions, unless they are clear, unambiguous,

and free of doubt, are subject to construction, and their true intent and meaning must be ascertained by the same rules of interpretation as apply to other legislative grants, the universal rule being that whenever the privileges granted to such a corporation come under revision in the courts, the grant is to be strictly construed against the corporation and in favor of the public, and that nothing passes to the corporation but what is granted in clear and explicit terms.

"Whatever is not unequivocally granted in such charters is taken to have been withheld, as all such charters and acts extending the privileges of corporate bodies are to be taken most strongly against the corporators.

"Vested rights, it is conceded, cannot be impaired under such a reserved power, but it is clear that the power may be exercised and to almost any extent, to carry into effect the original purpose of the grant and to protect the rights of the public and of the corporators, or to promote the due administration of the affairs of the corporation.

"Tested by these considerations, it is clear, even if it be admitted that the language of the charter is sufficient to import a contract, that the power of the legislature under the constitution is amply sufficient to justify that department of the state to pass the act raising the license fee for each car from thirty to fifty dollars."

Let us not fail to note that in the case last cited, as in the one at bar, vested rights of property could not be disturbed. Suppose it is now urged, as it was urged before the court below by one of the able counsel for the company, that every franchise conferred by the act of 1856 became vested eo instanti upon acceptance by the incorporators.

Is not such intention wholly overthrown by the court in the Philadelphia case? Is the right to consolidate an indefeasible vested contract right? If so, was not the stipulated $30 fee an indefeasible vested contract right? Let it not be said that the fee was in the nature of a tax and hence subject to regulation under the powers of taxation enjoyed by the state. Have we not already seen that exemption from taxation may, for due consideration, be contracted away by the state? In principle the cases are identical. The same rule of sovereign conduct invoked in Railway Co. v. Philadelphia may be invoked and is controlling here. It may be said that the withdrawal of the right of consolidation from the defendant would be an impairment, a destruction of a right vested upon acceptance of the charter, and hence an act of injustice to the parties with whom the sovereign

contracted. With greater force could such a claim be urged in the other cases. As was said in substance, in one of the cases, such considerations are to be addressed not to the ear of the court, but to that of the legislature. It is enough to note that the legislature saw fit to reserve the power; grantees take their chances.

VI.

The words, "in any manner so as not to destroy or impair the vested rights of the corporation," are merely words of caution and without legal effect.

The Minnesota statute is not the only one in which we see evidenced, by the use of unnecessary words, precaution in guarding against unwarranted construction. In that statute the legislature first provided for the reservation of the power of amendment. It next proceeds to the protection of property rights. There was to be no invasion there of those rights, and the legislature undertook to say so by the language used.

We have an interesting illustration of legislative caution in such regard in the case of Perrin v. Chesapeake & Del. Canal Co., 9 How. 186. That case involved a statute containing the following section:

"That the said canal and the works to be erected thereon in virtue of this act, when completed, shall forever thereafter be esteemed and taken to be navigable as a public highway, free for the transportation of all goods, commodities, or produce whatsoever, on payment of the toll imposed by this act."

Referring to that section the court say:

"The clause in question declares that the canal shall be free for all goods, commodities and produce whatever, upon demand of the toll imposed by law, meaning obviously that no other or higher toll should be demanded. They were not intended to restrict the provision immediately preceding that the canal should be a highway, but more effectually to secure the right of the public by restricting the toll to be demanded to the toll imposed by the act. They were introduced, like the provision in the charter in Pennsylvania hereinbefore mentioned, which prohibits the company from exercising any powers but such as are set forth in the charter or necessarily incident to the corporation. Neither of these provisions were necessary, but they were introduced as measures of precaution to guard against strained or forced inferences, which the power of gain might induce a corporation to make, injurious to the rights of the public and contrary to the intention of the legislature."

The case of Railway Co. v. Philadelphia, supra, is also in point, where the court say:

"Stress it appears was laid in the court below upon the words of the act, 'as required by their charters,' as if the obligation did not arise unless it was created by the terms of the charter, but the supreme court show conclusively that the act of the legislature, when properly construed, did not sustain the proposition, and it appears to have been abandoned."

The most that the defendant can properly urge against the words is, that they are ambiguous. Let it be admitted that they are capable of two constructions, the one that they refer to rights vested in property acquired; the other, that they refer to rights vested in the franchises bestowed at once upon acceptance. The moment it is admitted that they are ambiguous, the construction must favor the public. For it is a well established rule that in public grants doubts must be resolved in favor of the state. Whether the grant be of property, franchises, or privileges, it is construed strictly in favor of the public. Nothing passes but what is granted in clear and explicit terms. (Suth. on Stat. Const., Sec. 378.)

It is therefore contended by the state that the only just construction of the clause in question is, that it refers to rights vested in acquired property. It would be absurd for the legislature to reserve the power of amendment, and in the same sentence render it vain and nugatory, as would be the case if any other construction were to obtain.

When we speak of vested rights acquired under a legislative grant, it is highly important to bear in mind that those rights may be affected by the question whether the grant is a contract or not. A contract is the same, so far as binding obligations are concerned, whether it is made between private parties or between the state and one of its citizens. The crown of England entered into an irrevocable obligation with Mr. Wheelock and his associates. It signifies nothing that the contract is in the form of letters patent of the King or an act of the legislature. It is the same as though the legislature had authorized an agent of the state to draw and execute the deed. Can the private party withdraw from the obligation of his contract? If not, it is then true, that every franchise vested by the contract grant (saving, of course, the police power) becomes by acceptance of the same a vested right. It is then a vested right in the same sense that every right secured in the private contract between individuals is a vested right. If one enter into a valid contract with A for the construction of a driveway

across his premises, he acquires a vested right, even before the road is constructed. A might have reserved in the contract the right of revocation; and, if he had done so, would the other then have had an indefeasible vested right? Mr. Justice Story, with clear discernment, very accurately stated in the Dartmouth College case the law upon the subject:

"In respect to corporate franchises," he says, "they are, properly speaking, legal estates vested in the corporation itself, as soon as it is in esse. They are not mere naked powers granted to the corporation, but powers coupled with an interest. The property of the corporation vests upon the possession of its franchises." (4 Wheat. 700.)

But of what was Justice Story speaking? Not of a public law; nor yet of a private law containing a revocation stipulation, but of a private charter contract. In short, of a simple contract. But that great jurist emphasized the fact, as we have elsewhere seen, that legislatures, like individuals, may reserve to themselves the right to terminate the contract in toto or as to any of its features. And this, it is our contention, is precisely what the legislature intended to do by force of section 17.

The very statement of the contention of the other side is enough to overthrow it. They must admit that the purpose of the section was the reservation of the power of amendment. But they supplement the admission with the asseveration that the amendment was to be in immaterial matters; that not a right conferred could be disturbed. They wilfully close their eyes to the fact that the legislature of Minnesota in 1856, as wise and prudent men, regardful of the welfare of the future generations of the people of that state, as well as those of their own generation, in the very beginning of railroad enterprises in the territory, undertook to save to the state substantial powers over the creatures they were then investing with life and authority. Should they be wise and prudent, or foolish and wasteful? Do men in private affairs, in matters of the highest concern, take no precaution against their own want of knowledge and experience? Viewing the question in this light (its only true light), how feeble and unworthy is the contention of the other side. Against the view of high and wise and just considerations, they set up the miserable plea of ignorance and folly. It is indeed surprising if a few harmless words shall suffice to overthrow a great and manifest purpose, and enable a corporation to surpass the very bounds of reason.

VII.

It is a well established doctrine that a public grant must be construed strictly against the grantee.

This is a principle of the utmost importance in determining the proper construction to be placed upon the language employed in defendant's grant.

We preface what will be said under this head by the eminently sound views expressed by Mr. Tiedman in his work on Limitations of Police Powers, Sec. 190:

"To recognize in a legislature the power by a contract to tie the hands of all future legislatures and deprive them of the power to interpose regulations that may become needful as a protection to the public against the aggressions or other unlawful acts of the corporation, would be a specimen of political suicide."

Applied to the case at bar, the words of the learned author are invested with peculiar force and significance. We are presented with the spectacle of a corporation organized forty years ago, even before the admission of the state into the Union. From its inception it was for a period of thirty-four years a mendicant, a mere creature of straw. The Manitoba Company constructed the only line of road ever built by it—the Hinckley Branch. It was not constructed, however, with any design that the defendant company should perform its duties under its charter as a common carrier. No sooner was that line constructed, than it was turned over, by bill of sale, or other conveyance, in absolute fee, to the Manitoba Company. Without a mile of road, in its own name, clothed in a charter which by lapse of time and non-user, had passed from the legislative as well as the popular mind, it has been transformed, by mere manipulation, into a railway system of vast wealth and power. The Manitoba Company, a vast system in itself, has succumbed to its influence, and has retired from active operation under a lease to it for a period of nine hundred and ninety-nine years. It owns the stock of the Eastern Minnesota, the Willmar & Sioux Falls, the Montana Central and other companies.

The grant to the St. P. & P. of March 2, 1867, was forfeited March 7, 1870, and transferred to the M. & St. C. Rd.

Edgerton Rd. L. p. 218.

The entities of those companies are preserved indeed; but they are subject to the controlling influences of another. The power which inspires and moves them is the management of the defend ant company. But what they have accomplished in the past is slight in comparison with a purpose which now concerns this

court. The learned counsel may protest, with the utmost earnestness, that the proposed agreement is only a simple traffic arrangement between companies, perfectly lawful and harmless, and which will in no wise affect the corporate status or entity of the Northern Pacific Company. The court will, however, look beyond the form to the substance. As to the real character of that agreement, more will be said later in the brief.

It is such a corporation, with such a history, with a charter thus resurrected and employed, which claims immunity from legislative interference on the ground that the franchises and privileges conferred in territorial days, lapsed by the non-user of thirty-four years, are now by inheritance indefeasibly vested in it.

Is not such a claim shocking to one's sense of justice? It is indeed the doctrine of vested rights gone mad.

When the defendant, therefore, asks to expunge from section 17 words which tell against it, or to invest other words with a meaning which nullifies the whole section, it is proper to remember the real character of the corporation which seeks to evade the force of one of the most valuable safeguards established by the legislature of Minnesota. Should not this charter, of all others, be construed liberally in favor of the state?

The rule that a grant must be construed strictly against the grantee, will not, we apprehend, be controverted. It is supported by a great array of authority.

The St. Charles River Bridge v. The Warren Bridge, 8 How. 581.
Richmond Rd. Co. v. Louisa Rd. Co., 13 Id. 81.
Dubuque & Pac. Rd. Co. v. Litchfield, 23 How. 88.
Holyoke Co. v. Lyman, 15 Wall. 512.
Newton v. Commissioners, 100 U. S. 561.
Fertilizing Co. v. Hyde Park, 97 U. S. 666.
Railway Co. v. Philadelphia, 101 U. S. 539.
Missionary Society v. Dalles, 107 U. S. 342.
Slidell v. Grandjean, 111 U. S. 437.
Central Trans. Co. v. Pullman, 139 U. S. 49.
State v. Vanderbilt, 37 Oh. St. 641.

A few brief expressions of the courts will suffice to illustrate in what tone they speak upon the subject.

In Mills v. St. Clair Co., 8 How, 581, the court say:

"First, that in a grant like this designed by the sovereign power making it to be a general benefit and accommodation to the public, the rule is that if the meaning of the words be doubtful, they shall be taken most strongly against the grantee, and

for the government; and therefore should not be extended by implication in favor of the grantee beyond the natural and obvious meaning of the words employed; if these do not support the right claimed, it must fall."

In Fertilizing Co. v. Hyde Park, supra, it was said:

"The rule of construction in this class of cases is that it shall be most strongly against the corporation. Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceded but what is given in unmistakable terms, or by an implication, equally clear. The affirmative must be shown. Silence is negation and doubt is fatal to the claim. This doctrine is vital to the public welfare. It is axiomatic in the jurisprudence of this country."

In Newton v. Commissioners, supra, it was said:

"But conceding, for the purpose of this opinion, that there is here a contract, as claimed by the plaintiffs in error, then the question arises, what is the contract; or, in other words, to what does it bind the state?

"The rules of interpretation touching such contracts are well settled in this court. In Tucker v. Ferguson, 22 Wall. 527, we said: 'But the contract must be shown to exist. There is no presumption in its favor. Every reasonable doubt should be resolved against it. Where it exists, it is to be rigidly scrutinized, and never permitted to extend either in scope or duration beyond what the terms of the concession clearly require.' There must have been a deliberate intention clearly manifested on the part of the state to grant what is claimed. Such a purpose cannot be inferred from equivocal language.

"It is equally well settled that contracts made by the state with individuals, in granting charters, are not to be construed by the same rules as contracts between individuals. In the latter, the rule of the common law, which is the same as common sense is, 'words are to be taken in the strongest sense against the party using them;' on the idea that self-interest induces a man to select words most favorable to himself. It is otherwise when the state is a party; for it is known that in obtaining charters, although the sovereign is presumed to use the words, in point of fact the bills are drafted by individuals seeking to procure the grant, and that 'the promoters,' as they are styled in England, or the 'lobby members,' as they are styled on this side of the Atlantic, have the charters or acts of incorporation drafted to suit their owners' purposes; and a matter of this kind, instead of being, in its strict sense, a contract, is more like

the act of an indulgent head of a family dispensing favors to its different members, and yielding to importunity."

The Raleigh & G. Rd. Co. v. Reid, 64 N. C. 155.

"The civil law inclined to consider grants made by the sovereign with a favorable eye, and to give them an enlarged and liberal interpretation. The common law, however, in obedience to its instinctive sympathy, with equal rights and its jealousy of prerogative, has always adopted a widely different and much sounder rule. The uniform language of the English and American law is that all grants of privilege are to be liberally construed in favor of the public, and as against the grantees of the monopoly, franchise, or charter to be strictly interpreted. Whatever is not unequivocally granted in such acts, is taken to have been withheld; all acts of incorporation, and acts extending the privileges of incorporated bodies, are to be taken most strongly against the companies."

Sedgwick, Cons. of Stat. & Con. Law, 291, 2nd Ed.

"Corporate powers can never be created by implication nor extended by construction. No privilege is granted unless it be expressed in plain and unequivocal words, testifying the intention of the legislature in a manner too plain to be misunderstood. When the state means to clothe a corporate body with a portion of her own sovereignty and to disarm herself to that extent of the powers which belong to her, it is so easy to say so that we will never believe it to be meant when it is not said; and words of equivocal import are so easily inserted by mistake or fraud, that every consideration of justice and policy requires that they should be treated as nugatory, when they do find their way into the enactments of the legislature. In the construction of a charter, to be in doubt is to be resolved; and every resolution which springs from doubt is against the corporation. This is the rule sustained by all the courts in this country and in England."

Penn. Rd. Co. v. Comrs, 21 Penn. St. 1.

"A corporation is strictly limited to the exercise of those powers which are specially conferred upon it. The exercise of the corporate franchise, being restrictive of individual rights, cannot be extended beyond the letter and spirit of the act of incorporation."

Beatty v. Lesee, 4 Peters, 152, 168.

The above expressions of American Courts which might be greatly extended, declare a just, a salutary and a necessary rule, for the construction of private charters.

VIII.

The agreement cannot lawfully be effectuated unless each of the parties to it is qualified to enter into it.

Granting that the defendant is properly qualified to consolidate with another company, it should, however, be restrained from consolidating with one which has no legal capacity to contract with it in such respect.

Central Transp. Co v. Pullman Car Co., 139 U. S. 47.
Thomas v. Rd. Co., 101 U. S. 71.
Oregon Ry. v. Oregonian Ry., 130 U. S. 1.
Black v. D. & R. Canal Co., 22 N. J. Eq. 130.
Beach on Priv. Corp., Sec. 330 and authorities cited in note.
State v. A. & N. R. R. Co., 24 Neb. 143.

In Thomas v. Rd. Co., the court say:

"A corporation, like a railroad company, has granted to it by charter a franchise intended in large measure to be exercised for the public good; the due performance of those functions being the consideration of the public grant, any contract which disables the corporation from performing those functions which undertakes, without the consent of the state, to transfer to others the rights and powers conferred by the charter, and to relieve the grantees of the burden which it imposes, is a violation of the contract with the state, and is void as against public policy."

In Black v. D. & R. Co., supra, it was said:

"It may be considered as settled that a corporation cannot lease or alien any franchise, or any property necessary to perform its obligations and duties to the state, without legislative authority."

In Central Transp. Co. v. Pullman Car Co., it was held that:

"A contract of a corporation, which is ultra vires, in the proper sense, that is to say, outside the object of its creation as defined in the law of its organization, and therefore beyond the powers conferred upon it by the legislature, is not voidable only, but wholly void, and of no legal effect. The objection to the contract is not merely that the corporation ought not to have made it, but that it could not make it. The contract cannot be ratified by either party, because it could not have been authorized by either. No performance on either side can give the unlawful contract any validity or be the foundation of any right of action upon it."

The Northern Pacific Company and its stockholders have no authority conferred by the law of its organization to make the

contract. In section 3 of the Act of Congress of July 2, 1864, (the act of incorporation), are the following provisos:

"Provided: That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act; provided, further, that the railroad company receiving the previous grant of land may assign their interest to the said Northern Pacific Railroad Company, or may consolidate, confederate and associate with said company, upon the terms named in the first section of this act."

Section 5 of the same act contains the following provision:

"And it shall be the duty of the Northern Pacific Railroad Company to permit any other railroad, which shall be authorized to be built by the United States, or by the legislature of any territory or state in which the same may be built to form running connections with it on fair and equitable terms."

(Edgerton's Rd. Laws, pp. 104-6.)

It is obvious that the provisos in section 3 contemplate the adoption of the line of another railroad by the Northern Pacific Company, lying substantially along its route, and, to that end, the extinguishment by consolidation, pro tanto, at least, of that company. It is equally obvious that section 5 implies nothing more than mechanical connections and limited running arrangements.

Section 3 of the act of March 4, 1870, entitled an act in relation to the taxation and to facilitate the construction of the N. P. Rd., is as follows:

"That wherever the N. P. Rd. Co. shall connect with or cross the route or line of any other road within the limits of this state, and a portion of the routes or lines of said roads shall be parallel or coterminous, such portions may by agreement of the companies interested therein be blended in one track, or a double track and side tracks, and may be owned and used in common for such length of time and upon such terms as may be agreed upon by said companies, and said companies shall thereby be held to have complied with the requirements of their respective charters in this particular, the same as if independent tracks had been built by each." Approved March 4, 1870.

Edg., p. 651.

This does not imply any diminution of the corporate entities or powers of either company. It simply means that one track may be used in common.

The disability of the Northern Pacific Company is seemingly insuperable. Nor will it be presumed that a new company will ever acquire authority from any source, state or national, to thus violate a fundamental law of police regulation. The court is bound to grant the writ on this ground alone, unless it is made to appear by the unequivocal terms of the express law that the Northern Pacific Company has the requisite capacity to effectuate the agreement.

IX.

The effectuation of the agreement is against public policy, tending to the creation of an oppressive monopoly hurtful to the common welfare, the right to make which could not be irrevocably granted by the legislature, even assuming that the terms of the grant are broad enough to contemplate it.

No court has ever yet undertaken to accurately define or declare the ultimate boundaries of the police power of a state. Perhaps the courts have nowhere gone farther upon the subject than did the federal supreme court in Lawton v. Steele, 152 U. S. 136:

"The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every state in the Union. It is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance. Under this power it has been held that the state may order the destruction of a house falling to decay or otherwise endangering the lives of passers-by; the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyance, and of interments in burial grounds; the restriction of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane or those afflicted with contagious diseases; the restraint of vagrants, beggars and habitual drunkards; the suppression of obscene publications and houses of ill-fame; and the prohibition of gambling houses and places where intoxicating liquors are sold. *Beyond this, however, the state may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require,*

but what measures are necessary for the protection of such interests."

Adverting to the 14th Amendment, Mr. Justice Field said in Barber v. Connolly, 113 U. S. 31:

"But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, *and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity.*"

"Many attempts have been made in this court and elsewhere to define the police power, but never with entire success," was said in Stone v. Mississippi, 101 U. S. 814. "It is always easier to determine whether a particular case comes within the general scope of the power than to give an abstract definition of the power itself which will be in all respects accurate."

"Every law comes within this description which concerns the welfare of the whole people of the state, or any individual within it, whether it relates to their rights or their duties; whether it respects them as men or citizens of the state; whether in their public or private relations; whether it relates to the rights of persons or of property of the whole people of the state, or of any individual within it."

Mayor v. Miles, 11 Peters, 139.

"The police power of the states," says the supreme court of Illinois, "is co-extensive with self-protection, and is applicably termed the law of overruling necessity. It is the inherent and plenary power in the state, which enables it to prohibit all things hurtful to the comfort and welfare of society."

Lakeview v. Rose Hill, 70 Ill. 192.

In the very recent case of Louisville Rd. Co. v. Commonwealth, 31 S. W. R. 481, replying to the contention that the question was controlled by the commerce clause of the federal constitution, it was said:

"But it is contended the question of right involved in this case is controlled by that clause of the constitution of the United States which provides that 'congress shall have power to regulate commerce arising among the states.' The power of a state, by proper enactments, to foster competition and prevent monopoly within its own limits of the business of railroad transportation has never been made a question in the supreme court of the United States, notwithstanding nearly two-thirds of the states have, and for years have had, provisions on the subject of the

same character and quite as stringent and comprehensive as that of section 201. Moreover, in several of them the validity of such provision has been adjudicated and sustained.

"That there should be such consensus of opinion of the right and necessity for state enactments on the subject is persuasive of their validity and at the same time convincing of their necessity. * * * The purpose and effect of section 201 is simply to prohibit, because against public policy, the acquisition and control of these roads by any company that will use and operate them so as to hurt the public. It was not intended to regulate the commerce of which these roads are mere vehicles, nor to prescribe rules by which that commerce is to be carried on."

The courts are in accord to the effect that it rests solely with the legislature to determine when the public welfare or safety requires its exercise. With the wisdom, policy or necessity of a law upon the subject, the courts have nothing to do. Their whole duty is discharged when they guard the citizen against an unreasonable use of it.

Said the court of appeals in Metropolitan Board v. Barrie, 34 N. Y. 667:

"The necessary powers of the legislature on all subjects of internal police being a part of the general grant of legislative power given by the constitution, cannot be sold, given away or relinquished. Irrevocable grants of property and franchises may be made, if they do not impair the superior authority to make laws for the right government of the state; but no one legislature can curtail the power of its successors to make such laws as they may deem proper in matters of police."

See further People ex rel. v. Squires, 107 N. Y. 603.

Construing an act of the legislature requiring telegraph and other wires to be placed under ground, Mr. Justice Earl in A. R. T. Co. v. Hess, 125 N. Y. 645, says:

"The legislature did not intend to divest itself and could not divest itself of its control over the streets for the public welfare. * * * The state in the exercise of its police power, and the regulating control which it has over corporations created by its authority, may exercise a general supervision over such corporations. It may prescribe the location of the tracks, the size and character of the rails, the precaution which shall be taken for the protection of the public, and the character and style of highway crossings; *and no one has ever yet questioned that it may do whatever is necessary and proper for the public welfare in the control and regulation of the franchises which such corporations have obtained by statutory authority.*"

The Courts of this country have during the past twenty-five years witnessed numerous and important conflicts upon the question between the state and the citizen. "The state cannot regulate charges for services in using elevators," said Mr. Munn; but it can, and did. (94 U. S. 113.)

"Nor can it prescribe rates over lines of road," said the railroad companies; but they were mistaken. (94 U. S. 155, 164.)

"It cannot take from us the right to exclude negroes from our theaters," said Stanley and Nichols; but it was held otherwise. (Civil Rights Cases, 19 U. S. 4.)

Mr. Mugler, in a lawful manner, built and equipped at great expense a brewery in the state of Kansas, and thereupon engaged for a livelihood in the business of a brewer. The buildings and machinery were of little value for any other purpose. That state, through a legislative enactment, declared his business unlawful.

The enforcement of that law could not operate otherwise than to ruin Mr. Mugler in his business. It was more effective than if the state had employed an agent to burn his buildings to the ground, for in such case, he might have reconstructed them and resumed business. He denied the power of the state to act in a manner so arbitrary and oppressive. But this court replied:

"Under our system, police power is lodged with the legislative branch of the government. It belongs to that department to exercise what are known as the police powers of the state, and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, public health or public safety."

Mugler v. Kansas, 123 U. S. 623.

The principle is then, as stated in Lawton v. Steele, and Lake view v. Rose Hill, that the state may interfere whenever the public interests demand it; and that it is for the legislature to determine not only what evils the public interests require to be redressed, but also what measures are necessary for the protection of such interests. On every great occasion when the state has asserted or assumed to exercise the right of regulation of a business affected with a public interest, it has been strenuously resisted on the ground that it would result in the impairment of vested rights in property. But the principle, so essential to the welfare of a free and enlightened people, that no right can vest in the individual prejudicial to the health, comfort, safety, happiness and prosperity of the general public, has been sustained and has gathered strength from every assault made upon it.

It may now be pertinently asked, was the territorial legislature of 1856 armed with such tremendous authority that it might for generation after generation cripple the government of the future state in the regulation of its internal affairs, by transmitting to it, as a heritage, a corporation clothed with power so great as to place it above and beyond the law?

When questions of this character arise, the doctrine of the Dartmouth College case is invariably cited by the corporation. "These eleemosynary institutions," said Chief Justice Marshall, speaking of the educational institution involved, "do not fill the place which would otherwise be occupied by the government, but that which would otherwise remain vacant." (4 Wheat. 647.) Suppose the case at bar had been presented to Chief Justice Marshall, would he have held that the decision in the Dartmouth College case would be res adjudicata in the one before him where the institution does fill a place "which would otherwise be occupied by the government," and which would not otherwise be vacant? No one will deny that a railroad corporation is a governmental agency. Judge Dillon has spoken very advisedly in this regard in the case of Chicago, B. & Q. Rd. Co. v. Attorney General, 9 West. Jur. 347. He says:

"In all civilized countries the duty of providing and preserving safe and convenient highways to facilitate trade and communication between different parts of the state or community is considered a governmental duty. This may be done by the government directly, or through the agency of corporations created for that purpose. The right of public supervision and control over highways results from the power and duty of providing and preserving them. As to ordinary highways these propositions are unquestioned. But it is denied that they apply to railways built by private capital, and owned by private corporations created for the purpose of building them. Whoever studies the nature and purposes of railways constructed under the authority of the state by means of private capital will see that such railroads possess a two-fold character. Such a railway is in part public and in part private. Because of its public character, relations, and uses, the judicial tribunals of this country, state and national, have at length settled the law to be that the state, to secure their construction, may exert in favor of the corporation authorized by it to build the road both its power of eminent domain and of taxation. This the state cannot do in respect of occupations or purposes private in their nature. * * * In its public character a railroad is an improved highway, or means of more rapid and commodious communication, and its public

character is not divested by the fact that its ownership is private. * * * In its relations to its stockholders, a railroad or the property in the road and its income, is private property, and, subject to the lawful or reserved rights of the public, is invested with the sanctity of other private property. The distinction here indicated marks with general accuracy the extent of legislative control, except where this has been surrendered or abridged by a valid legislative contract. Over the railway as a highway, and in all its public relations, the state, by virtue of its general legislative power, has supervision and control; but over the rights of the shareholders, so far as these are private property, the state has the same power and no greater than over other private property."

See also Central Transp. Co. v. Pullman, 139 U. S. 51.

We do not speak unadvisedly in saying that the Dartmouth College case has no application to the facts of the case at bar.

"The principle there laid down," says Mr. Justice Sawyer, in Newton v. Commissioners, 100 U. S. 557, "and since maintained in the cases which have followed and been controlled by it, has no application when the statute in question is a *public law relating to a public subject* within the domain of the general legislative power of the state, and involving the public rights and public welfare of the entire community affected by it. The two classes of cases are separated by a broad line of demarkation."

It is a matter of no importance here that the institution in question in the Newton case was a municipal body, for, as we have seen, the legislature of the territory of Minnesota expressly declared the act "to be a public act." Moreover, no distinction in principle can be drawn between a city and a railway company. As governmental agencies they differ only in respect to functions. Both the law and the subject being public, the Dartmouth College case does not apply.

It is a most sacred duty; it may be suggested, that the judiciary of this country owe it to the public to guard against any enlargement of that doctrine.

"It is under the protection of the decision in the Dartmouth College case," says Judge Cooley, "that the most enormous and threatening powers in our country have been created. Some of the great wealthy corporations having greater influence in the country at large and upon the legislation of the country than the states to which they owe their corporate existence." Const. Lim. 279. See note.

It should be applied only in cases falling clearly within its

meaning. All doubts should be resolved in favor of the public.

The consolidation is at variance with public policy.

Let us ask the question, Is it a wise or prudent policy to permit the consolidation of those great systems of railway? There can be but one answer. The reasons against it are most cogent and manifold. First, it is maintained that the aggregation of vast wealth under corporate control is a standing menace to the liberties and happiness of the American people.

Public authority is set at defiance by it. It not only corrupts or perverts the agencies of government, but it pollutes likewise the very springs of public sentiment. The statute books of the country bespeak its baleful influence; the press of the country is enlisted into its service; and its armies of retainers are everywhere active in its behalf. Let these two great corporations unite their forces, mass their wealth and centralize their influence under a single management, and how farcical will be any attempt to regulate them either as to rates, or the quality or character of their services to the public. The views of the public, dependent upon the services of those companies, are entitled to respectful consideration in a matter of so great public importance. Can any one be in doubt as to the public sentiment upon the question? Can the numerous municipalities, within and without the state of Minnesota, the cities and counties, many of which are bonded to large amounts to aid in the construction of those roads, look with composure upon the consolidation of their interests? From the very nature of the case, there will be, there must be, loud and emphatic protest against it. Perfect that consolidation, effectuate the agreement expressed in the complaint, and competition, a material element in the prosperity of the Northwestern states, is at an end. And competition, be it remembered, does not consist alone in matters of rates. It extends to all manner of service. Without competition, there will be fewer trains, less commodious passenger coaches, less expedition in the handling of freight.

When it is protested that it is not consolidation, but merely a traffic arrangement, that is contemplated, it is answered that it is preposterous to suppose that the Northern Pacific Railway Company would pay to the shareholders of the defendant's company fifty million dollars absolutely and irrevocably, merely to secure the benefits of such a privilege. The court must not overlook the great disadvantage at which the state is placed in this matter. It necessarily gropes in the dark, and is advised as to the terms of the agreement only to the extent that the corporation is pleased to divulge them. The officers of the defendant

company dared not, in the face of the general statutes of Minnesota, propose an out and out consolidation. They devise rather, an agreement, under the guise of a traffic arrangement, whereby consolidation may be effected in substance, if not in form. Who but the Great Northern management will dominate the policies of those two companies?

But let us scrutinize that agreement a little closely. What is contemplated by it?

1. The holders of the second, third and consolidated mortgages of the Northern Pacific Company shall cause the mortgages to be foreclosed, and the railroads and other properties and franchises of the company, including its franchise to be a corporation, to be sold subject to the divisional and general first mortgage bonds.

2. They shall cause the properties to be purchased in their interest and a new company formed.

3. The new company shall then issue its bonds to the aggregate amount of over $100,000,000 and its fully paid up stock to the further amount of $100,000,000.

4. It shall then enter into an agreement with the defendant for the exchange of traffic, betwen their lines, at all intersecting points.

5. They shall join in providing facilities for an interchange of cars and traffic; and the Northern Pacific shall interchange traffic with defendant, and operate its trains to that end upon the terms agreed upon under joint traffics, or otherwise.

6. The defendant shall have the right to bill and route its traffic, passengers and freight, from points on its line by way of such connections as now exist or may hereafter be constructed between said line and the Northern Pacific Company, to Winnipeg, Tacoma, Portland, and all points in the different states through which the line of the Northern Pacific Railroad extends and not reached by the line of this defendant.

7. The defendant shall have the right to make use of the depot and terminal facilities of the Northern Pacific Company at Spokane Falls and other points, jointly with that company.

8. In consideration of such traffic contract, the Great Northern Railway Company shall guarantee for the benefit of the holders of said bonds, that the net income of the latter company applicable to the payment of the interest upon said bonds shall never fall below $6,200,000 per year.

9. As compensation for the risk of loss to the stockholders in the defendant company, which the said guarantee might produce by the diversion of portions of its earnings of the Great

Northern Railway Company to make good its said guarantee of interest upon the bonds of the reorganized company, the last named company shall transfer to the shareholders of the Great Northern Company or to some person or corporation as trustees, for their use, the one-half part of the capital stock of said reorganized company.

In short, then, both companies have access for the running of trains to all the tracks of the two systems. Terminal facilities may be used in common. The Great Northern Company gives its guarantee to the shareholders of the Northern Pacific Company that their interest to the amount of $6,200,000 per year will be paid. The shareholders of the Great Northern Company will become the recipients of bonds to the amount of $50,000,000.

What more, pray, could be accomplished by consolidation? Would Mr. Hill, the great moving spirit of the Great Northern Railway Company, consent to that guarantee unless he was assured that he or his company was to have a voice in the control of the Northern Pacific Company? Now, let us observe, and it is a very significant fact in understanding this agreement, one-half of the capital stock is by that agreement to be turned over to the Great Northern shareholders. Need it be suggested that when Mr. Hill, as the trustee of his shareholders, gets possession of one-half of the capital stock of the Northern Pacific Company, he will also acquire by purchase, or otherwise, sufficient of the other half to place the control of that company in his hands? Stockholders are vested with the power of voting on all matters concerning the corporation. They it is who elect presidents and vice presidents and boards of directors. Can any man with even the slightest discernment or judgment read that agreement and go amiss as to its real purport? No consolidation! Why, in all the history of railroading there never was proposed a more effective one than is couched in the terms of the agreement.

It is evident, then, that we are to have an amalgamation of interests. From St. Paul to the Pacific coast, an immense territory, traversed and interlaced with 8,000 miles of railroad, the arteries through which course the life currents of cities and towns and communities innumerable, is to be shadowed by a monopoly which has no fellow anywhere.

At this point attention is called to the view taken by His Honor Judge Sanborn of this agreement. In his decision he says:

"Does chapter 29 of the act of 1874, or section 3 of chapter 94 of the act of 1881, in terms prohibit the performance of this agreement, if either of them is to be construed to be an amendment of this charter? Section 3 of the act of 1881 provides that no rail-

road corporation shall consolidate with, lease or purchase, or in any way become the owner of or control any other railroad corporation or any stock thereof, which owns or controls a parallel or competing line. The new corporation which this agreement contemplates will own or control many lines of railroad that are competing and some that are parallel with lines of the defendant. The defendant proposes to purchase one-half of the stock of this corporation and a traffic agreement with it, and to pay therefor by a guarantee of its bonds.

"It matters not that it proposes that the stock purchased shall be issued to its shareholders. The defendant railroad company buys it, and if it does not propose to own and control it, it does propose that its owners shall own and control it, and that is not an essential difference in the practical operation and effect of the scheme. The conclusion is that if section 3 of the act of 1881 is an amendment of the defendant's charter, the performance of this agreement falls within its prohibition."

So far as these companies may enter into lawful traffic arrangements, or employ lawfully the tracks of the other, the state has no disposition to impede them in so doing. No valid objection can be urged to an arrangement between them, for instance, whereby one of their tracks between St. Paul and St. Cloud may be employed for the most by the trains of both roads westward bound and the other so used for trains eastward bound, or otherwise as the dispatch of business may require. Such an arrangement would conduce to safety and expedition. Doubtless other instances might be noted where such arrangements would be to their mutual advantage and, in fact, commendable. But it is not for these things, save in a minor degree, that the proposed agreement is sought to be effected. The chief purpose to be subserved is consolidation, in substance, if not in form, of the two great systems. Any other view will be sadly at variance with the truth.

(c) It is an unlawful combination.

It is, we assume, a sound doctrine that combinations among those engaged in public business which have for their object the securement of a monoply of that business for themselves, are void.

In Hooker v. Vandewater, 4 Denio 352, the court say:

"It is a general proposition that an agreement to do an unlawful act cannot be supported at law; that no right of action can spring out of an illegal contract, and this rule applies not only when the contract is expressly illegal, but whenever it is opposed to public policy or founded on an immoral consideration, the

maxim being ex turpi causa non oritur actio. A court of law will not lend its aid to enforce a performance of a contract which appears to have been entered into for the express purpose of carrying into effect that which is prohibited by the law of the land. The Revised Statutes provide that 'if two or more persons shall conspire to do any act injurious to trade or commerce, they shall be deemed guilty of a misdemeanor.' The object of the agreement made between the parties to the contract upon which the action in this case is founded, as expressed upon its face, was to establish and maintain fair and uniform rates of freight, and to equalize the business of forwarding on the Erie & Oswego canals among themselves, and to avoid all unnecessary expense in doing the same for a limited period. Parties respectively owned, and were then using distinct lines fitted up for carrying on that business independently of and disconnected with each other. To accomplish that object they agreed, in effect, that each party should run his line of boats upon these canals during the period of canal navigation in 1842, at rates of freight fixed by themselves, from which neither should deviate, and to indicate the interest of each, the respective lines were converted into stock in all amounting to 69 shares. They were to share equally in the net earnings of all the lines in proportion to the number of shares of such stock. * * * The object of this combination was obviously to destroy competition between the several lines in the business engaged in. It was a conspiracy between the individuals contracting to prevent a free competition among themselves in the business of transporting merchandise, property and passengers upon the public canals. The question arises, is such a conspiracy to commit such an act injurious to trade or commerce within the meaning of the statute, and therefore illegal? * * * That the raising of the price of freights for the transportation of merchandise or passengers upon our canals is a matter of public concern, and in which the public have a deep interest, does not admit of doubt. It is a familiar maxim that competition is the life of trade. It follows that whatever destroys, or even relaxes competition in trade, is injurious, if not fatal to it. (The People v. Fisher, 14 Wend. 9.) The object of the agreement as expressed in the written contract, was plausible enough; but it is impossible to conceal the real intention. It is evident that the parties were the owners of five separate and powerful lines of boats, provided for the transportation of property, merchandise and passengers on the canals, then in use and in active rivalry in the business, affecting more or less the price of freights; to destroy which rivalry and keep up the

price to certain rates fixed by themselves was the great, if not the sole object of that agreement. The transaction amounted, as I think, to a conspiracy to commit an act injurious to trade and commerce, within the legal meaning of the statute denouncing it as a crime, and was therefore illegal and void."

In Stanton v. Allen, 5 Denio 441, the court, speaking with reference to an association among the proprietors of boats on the Erie and Oswego canals, under an agreement to regulate price of freight and passage by a uniform schedule to be fixed by a committee chosen by themselves, and to divide the profits of their business according to the number of boats employed by each, say:

"Though the branch of the law relating to public policy is liable to be misunderstood and extended beyond its proper dimensions, still it must not, on that account, be neglected or disparaged. The rule that contracts and agreements are void when contrary to public policy, when properly understood and applied, is one of the great preservative principles of the state. Sound morality is the corner stone of the social edifice; whatever, therefore, disturbs that is condemned under that fundamental rule. So marriage, being the only guarantees of a numerous and sound population, whatever imposes restraint or dishonor on it receives no countenance from the law. Upon no other reasonable ground than that the interest of the state requires it, can a contract with an alien enemy, otherwise innocent, be held entirely void. So the agreement not to compete at auction and to divide the profits. If we ascend to the artificial institutions of the government, of the state, we find that contracts are held void if they interfere with their healthful operation. Hence when wagers were generally lawful, a bet on the result of an election was illegal, and agreements in consideration of the withdrawal of opposition to a proposed statute have been held void. * * * It has heretofore been decided by this court that an association among carriers on the Erie canal with provisions in its articles very similar to the present, though of far less extent, was a conspiracy to commit an act injurious to trade, contrary to statute, and was therefore utterly void. (Citing Hooker v. Vandewater.) That decision being conclusive on the main point in the present case, I might have rested upon that authority alone, if I had not supposed that the action called for an opinion as to the legality of such an association upon the principles of the common law."

In Wharton Precedents, No. 658, will be found the remarks of Judge Greer, afterwards a member of this court, touching the character of an arrangement entered into between certain canal

and railroad companies with a view to the advancement of rates and prices. Among other things he said:

"Does such a combination come within the description of those which are punishable by indictment as conspiracies of common law? On this subject it would be useless to notice the various and confused dicta of what is necessary to constitute the offense, as there is no subject in the whole range of criminal jurisprudence so uncertain and unsettled in its definitions and principles. But so far as they have any application in the present case they are lucidly and correctly stated by Chief Justice Gibson in the case of Commrs v. Carlisle, Jour. of Jur. 255: 'I take it, then,' says the Chief Justice, 'a combination is criminal whenever the act to be done has a necessary tendency to prejudice the public, or to oppress individuals by unjustly subjecting them to the power of confederates and giving effect to the purposes of the latter, whether of extortion or mischief.' According to this view of the law a combination of employes to depress the wages of journeymen below what they would be if there were no recurrence to artificial means, is criminal. So, also, Chief Justice Savage in People v. Fisher, 14 Wend. 9, observes: 'It is important to the best interests of society that the price of labor be left to regulate itself, or rather to be limited by the demand for it.' * * * 'There is,' says Chief Justice Gibson, 'between the different parts of the body politic a reciprocity of action, which, like the antagonizing muscles in the natural body, not only prescribes to each its appropriate state and condition, but regulates the motion of the whole. The force of an individual to disturb the equilibrium can never be perceptible, but the increase of power by the combination of means, being in geometrical proportion to the number concerned, an association may be able to give an impulse not only oppressive to individuals, but mischievous to the public at large; and it is the employment of an engine so dangerous and powerful that gives criminality to an act which would be perfectly innocent, at least in a legal view, when done by an individual.'"

In Scott v. Smith, 4 Paton, Appeal Cases, it was held that a combination among the posting masters to raise the rates of postage was illegal. Said Lord Chancellor Loughborough, in that case:

"I submit as my opinion, that this combination ought to be reprobated, and that the justices have not punished the parties by fine, as they ought to have done."

Mr. Greenwood, in his work on public policy, page 655, quoting from a judicial decision, says:

"A contract that destroys rivalry in business and stifles compe-

tition in fixing rates of insurance is as prejudicial to the public interest as if it were a combination of merchants and tradesmen to maintain an unalterable standard for the price of cloth or calico, beef or butter. To condemn a combination formed to prevent competition for the furnishing of the materials used in the construction of a house, or in the work of its erection, and yet uphold a contract that will prevent competition in insuring it, is to lose sight of substance and pursue a shadow. The law, by reason of its adaptability, is able to meet the varying phases of all business transactions. That competition is the life of trade is not language of the street alone; it is a proverb in law. That the tendency of this contract is to destroy rivalry in the business, and to prevent that active competition which would otherwise exist, is too plain for serious controversy. But it is said in this case, that the arbitrary rate so established is on a sound business principle, and in the interest of the insured, in this, that it enables the insurance companies to do a safe business and prevents their insolvency. That is not the principle by which the business of this trading and commercial age is governed. The merchants, the tailors, the grocers, or the manufacturers, do not establish an inflexible standard of prices, and place them low, that the paying power of the customer may not be impaired; and it may be that such insurance companies as loan their surplus in the various states do not make such investments at the lowest possible rate of interest, that the borrower may be better able to pay the principal. However fair the phrase used by the pleader may seem, that the contract was in the interest of the insured, the judicial vision must not be obscured by the declaration of such a purpose, but, as I have said, must ascertain the tendency, aim and general scope of the contract from the whole of its provisions. The law favors trade; and its first aim is to promote the public interest, and after that, to preserve individual rights, and it will not permit any one to restrain a person from doing what the public welfare requires that he should do. * * * Courts act upon such a contract as this without proof of injury to the public. Would there be as strong competition under the agreement as without it? Recognizing the right of the public to an unrestricted competition in trade, one of its strongest demands is that great monopolies shall not be permitted to control prices and rule labor in their own interests; and to that end many states have attempted by legislative enactments to forbid the consolidation of parallel lines of railroad and telegraph companies, that competition may not be destroyed, and that the public may be protected from an arbitrary standard

of prices which are established (and naturally enough) more from motives of self-interest than a desire to promote the public welfare. The whole contract has but one tendency, that all its provisions distinctly point to one end, that of maintaining an arbitrary standard of rates, which inevitably tend to prevent that competition that would have otherwise existed."

In the case of Stewart v. Erie & Western Transp. Co., 17 Minn. 371, the court say:

"We pass now to consider the plaintiff's objections to the contract on the ground that it is against public policy as creating and tending to create a monopoly. This objection of counsel is also based upon the fourth, fifth, sixth and seventh clauses of the contract, 'the simple effect and meaning' of which is, as the counsel argues, 'that the railroad company shall, by use of its corporate powers and strength, secure to the transportation company a monopoly of the transportation upon the lakes of all freight and passengers to and from this state by that route, or pay the transportation company a penalty for not securing it to them.' Much of what has been said upon the other branch of the case is applicable to this. It is of the first importance here, as there, to bear in mind that this contract is, upon this appeal, to be assumed to have been made bona fide, and with the purpose which appears upon its face, and not colorably for any other, viz., for the purpose of providing for through transportation over the connecting routes of the contracting parties. It is also to be remembered, as we have already determined, that it is competent for the railroad company to enter into contracts with connecting carriers for the purpose of providing for through transportation over its road and the routes of such carriers, such contracts being made with a bona fide purpose to regulate traffic in a reasonable and just manner.

"A monopoly is not necessarily unlawful, for it may be created, permitted or tolerated by law. But we agree with the plaintiff's counsel, and with the cases by him cited, that *it is against the general policy of the law to destroy or interfere with free competition, or to permit such destruction or interference.* Sanford v. Railroad Co., 24 Pa. St. 378; Hooker v. Vanderwater, 4 Denio 353. An unauthorized monopoly is, therefore, against public policy as destroying and interfering with free competition. But if the right to exercise a monopoly be conferred by public authority, that fact is conclusive upon the question of public policy. Vermont, etc., R. Co. v. Vermont Cent. R. Co., 34 Vt. 49."

As we have attempted to show, the arrangement contemplated

by the contracting parties is practical consolidation—the control of one road by the management of the other. It is more and worse than pooling, for it means death to every form of competition.

But upon the subject of pooling we call attention to the remarks of Judge Cooley, quoted from an article appearing in the Railway Review of April 26, 1884, where he says:

"A pooling arrangement is a combination; and all combinations in a business which so intimately concerns the public look like attempts to establish a monopoly, and may sometimes result in establishing one. To monopoly the public is instinctively hostile, because it takes from them the power of dealing on equal terms with those who control it. Besides, a combination that has for its object to check competition, seems to stand in hostility to the industrial maxim that competition is the life of trade, a maxim which from time immemorial has beeen generally prevalent, and is commonly supposed to be one admitting of no question, and of universal application. The advantages of unrestricted competition are apparent to the public in industrial life all about us; and while in some kinds of business this is sharp, yet selfishness is generally sufficiently active and sufficiently intelligent to prevent its becoming ruinous. It does not detract from the worth or soundness of the maxim that under the operation of unrestricted competition individual disasters must occur; for when this happens, it is very likely to be found either that the parties did not understand the business they were engaged in, or managed badly, or lacked the necessary capital, or in some other particulars were inadequately equipped. Against ruin from these causes protection is impossible. The maxim referred to is so commonly accepted that courts have made it a basis for important judgments; and it is not to be wondered at, therefore, that the question should be made whether it is competent to erect barriers to free competition in a business so important to the public as that which is carried on by the railroads."

And Mr. Greenwood, in his work above cited, says (page 663):

"Experience teaches us that in union there is strength, and that we have more to fear from associated capital than from individual capital; that capitalists generally sympathize with each other, and that no regard for public interest will allay any desire on their part to make their investment more profitable; that were we to recognize the power of these corporations to ally themselves in the manner planned for us, we would be obliged to satisfy ourselves that there was cause for them, i. e., that their object was to put an end to ruinous competition, and it is plain that

upon public agents would devolve the duty of ascertaining this fact; and when we know of the comparative facility with which an honest financial showing could be withheld, and a discouraging account produced, and of the comparative ease with which such public agents could be corrupted, it may well be asked whether it would not be more advisable to withhold from them judicial sanction entirely, and let all come within the bane of the law."

In Hartford Railroad Co. v. New York Railroad Co., 3d Robertson 411, the court construed a certain agreement which had been entered into by and between the two companies. The language of the court will serve to indicate, so far as is important, the nature of the contract. The decision, although rendered by the Superior Court of the City of New York, a bench then composed of three judges, is of great weight because of the counsel who appeared for the parties, Mr. Wm. Tracy and Mr. W. M. Evarts. The court say:

"It is conceded by both parties that the contract of March, '50, is void as being opposed to public policy. An inspection of the contract satisfies me it is so. It is a compact between the parties intended to effect the facilities for public travel over a route of railroad which had been or might be authorized by law. The defendants were the lessees of the New Haven & North Hampton Railroad, then in part constructed. The lessors had covenanted not to extend the road northerly beyond Granby station, without the consent of the defendants, and had given over to the defendants all the franchises and corporate powers of such lessors for the purpose of locating or constructing any railroad or extension of any railroad northerly from Granby station. By the agreement of the plaintiffs of March 16, 1850, the defendants continued to hold the franchise and corporate powers conveyed to them by such lease until the 1st of July, 1869, and during such time not to extend such railroad north of Granby station. Such an arrangement was intended to prevent the extension of the New Haven & North Hampton Railroad to any point north of its terminus at Granby, and to prevent any competition in travel detrimental to the interest of the plaintiff road, which had a monopoly of the carrying trade from Springfield and points north of Springfield via the North Hampton & Springfield road, which such extension might interfere with. The completion of the New Haven & North Hampton Railroad to North Hampton would open a new line of travel southward and would be a competitor and rival of the road of the plaintiffs. Such competition and rivalry it was not lawful for these parties to prevent or attempt to

prevent. Any contract to effectuate such a purpose is void. Public policy is opposed to every infringement of the rights of travel, or of any of the facilities which competition may furnish, and the law will not uphold any agreement which does or may injuriously affect such rights or facilities." Citing:

Dulin v. Ward, 6 Johnson 194.

Hooker v. Vandewater, 4 Denio 349.

Stanton v. Allen, 5 Denio 434.

Shrewsbury v. R. R. Co., 21 Eng. L. & D. Rep. 319.

State v. R. R. Co., 29 Conn. 538.

Hood v. Same, 22 Conn. 502.

In New Hampshire the consolidation of rival and competing lines of railroad was long ago deemed by its legislature as against public policy, and in the nature of a monopoly, and was accordingly prohibited by a law passed in 1867. This statute is adverted to in Currier v. Rd. Co., 49 N. H. 325, and the court say:

"The object of the law of July 5, 1867, under which these proceedings are instituted, is, as its title indicates, to prevent railroad monopoly: It provides that rival and competing lines of railroad shall not be allowed to consolidate them, and that neither of said lines shall be run or operated by any such rival or competing line, under any business contract, lease, or other arrangement, but each and every such railroad shall be run, managed and operated separately by its own officers and agents and be dependent for its support on its own earnings from its local and through business, in connection with other roads, and the facilities and accommodations it shall afford the public for travel and transportation under a fair and open competition, unless such lease, contract or arrangement be authorized by the legislature and approved by the governor and council."

The language of the supreme court of Georgia in Central R. R. Co. v. Collins, 40 Ga. 630, is very appropriate in this connection.

"All experience," say the court, "has shown that large accumulations of property in hands likely to keep it intact for a long period, are dangerous to the public weal. Having perpetual succession any kind of a corporation has peculiar facilities for such accumulation and most governments have found it necessary to exercise great caution in their grants of corporate powers. Even religious corporations professing, and in the main truly, nothing but the general good, have proven obnoxious to this objection, so that in England it was long ago found necessary to restrict them in their powers of acquiring real estate. Freed, as such bodies are, from the sure bound to the schemes of individuals—

the grave—they are able to add field to field, and power to power, until they become entirely too strong for that society which is made up of those whose plans are limited by a single life.

"There is, too, in this country, a reason for strictly construing charters, and for confining corporations to their powers, that does not exist in any other. Under other forms of government, if a charter be found to have privileges which prove dangerous, it is in the power of the state to alter or repeal the charter. But getting their grants, as most of our corporations do, from the state, they are held to be contracts, and it is not in the power of the state, under the constitution of the United States, materially to interfere with the grant, however improvident or unwise it may prove to have been. For these reasons it has, in this country as well as in England, ever been considered the very highest public policy to keep a strict watch upon corporations, to confine them within their appointed bounds, and especially to guard against the accumulation of large interests under their control. Without doubt much of the prosperity of this country is due to the large number of corporations which have been created, and especially have we to be thankful for the good effected by railroad companies. But I am strongly impressed with the conviction, that much of their success in developing the resources of the country is due to the very jealousy which has ever held them strictly to their charters, and has constantly been careful to prevent an undue accumulation of interests under one management. The certainty that each stockholder has, that his funds will be applied to known and declared purposes, have made them favorite investments for prudent men, whilst the rivalry which opposing interests engender begets an energy, economy, skill and enterprise that have had much to do with the remarkable progress which such enterprises have made. A colossal enterprise, assured of handsome dividends by the possession of a monopoly, may well rest upon its position, knowing that however the country may suffer from its exactions, its own profits are secure. It is the rivalry of opposing interests, the struggle for success, nay, even for life, with dangerous opposition, that gives life, enterprise and success to railroads as to other human undertaking. It has been the conflict with thirty state lines, each with its opposing interests, and with numerous seaboard cities, each seeking to attract the rich outpourings from the great interior that has begotten the mighty net work of iron which interlaces our extensive territory; and I am convinced that there is no public policy more striking than that which, whilst it fosters every such undertaking, is yet careful

ever to keep in view the danger of a monopoly, and the good effect of rivalry and conflict between different companies."

In Morris Run Coal Co. v. Barclay Coal Co., 68 Pa. St. 173, we have a case in which a number of coal corporations of Pennsylvania entered into an agreement in New York to divide two coal regions of which they had the control; to appoint a committee to take charge of their interests which was to decide all questions and appoint a general agent at Watkins, New York; the coal mined to be divided between them, each corporation to deliver its proportion at its own cost in the different markets at such time and to such persons as the committee might direct; the committee to adjust the prices, rates of freight, etc.; enter into agreements with anthracite companies; the five companies might sell their coal themselves only to the extent of their proportion, and at prices adjusted by the committee; the agent to suspend shipments to either beyond their proportion; frequent detailed reports to be made by companies, and settlements monthly by the committee; prices to be averaged and payments made to those in arrear by those in excess; neither to sell coal otherwise than agreed upon; and the regulations of the committee to be carried out faithfully. A statute of New York makes it a misdemeanor for persons to conspire to commit any act injurious to trade or commerce. The supreme court of Pennsylvania decided that this agreement was in contravention of that statute, and also against public policy, and therefore illegal and void. Say the court:

"The effects produced on the public interests lead to the consideration of another feature of great weight in determining the illegality of the contract, to-wit, the combination resorted to by these five companies. Singly, each might have suspended deliveries and sales of coal to suit its own interests, and might have raised the price, even though this might have been detrimental to the public interest. There is a certain freedom which must be allowed to every one in the management of his own affairs. When competition is left free, individual error or folly will generally find a correction in the conduct of others. But here is a combination of all the companies operating in the Blossburg and Barclay mining regions, and controlling their entire productions. They have combined together to govern the supply and the price of coal in all the markets from the Hudson to the Mississippi rivers, and from Pennsylvania to the lakes. This combination has a power in its confederated form which no individual action can confer. The public interest must succumb to it, for it has left no competition free to correct its baleful in-

fluence. When the supply of coal is suspended, the demand for it becomes importunate and prices must rise. Or, if the supply goes forward, the price fixed by the confederates must accompany it. The domestic hearth, the furnaces of the iron master, and the fires of the manufacturer, all feel the restraint, while many dependent hands are paralyzed and hungry mouths are stinted. The influence of a lack of supply or a rise in the price of an article of such prime necessity cannot be measured. It permeates the entire mass of the community, and leaves few of its members untouched by its withering blight. Such a combination is more than a contract; it is an offense. 'I take it,' said Gibson, J., 'a combination is criminal whenever the act to be done has a necessary tendency to prejudice the public or to oppress individuals by unjustly subjecting them to the power of confederates, and giving effect to the purpose of the latter, whether of extortion or mischief.' Com. v. Carlisle, Brightley, 40. In all such combinations, where the purpose is injurious or unlawful, the gist of the offense is conspiracy. Men can and often do, by the combination of many, what severally no one could accomplish, and even what, when done by one, would be innocent.

"Every 'corner,' in the language of the day, whether it be to affect the price of articles of commerce, such as breadstuffs, or the price of vendible stocks, when accomplished by confederation to raise or depress the price and operate on the markets, is a conspiracy. The ruin often spread abroad by these heartless conspiracies is indescribable, frequently filling the land with starvation, poverty and woe. Every association is criminal whose object is to raise or depress the price of labor beyond what it would bring if it were left without artificial aid or stimulus."

Before quitting this branch of the case, we desire to present the views of a writer who has made the subject of railroads the study of many years, and is generally acknowledged, especially among railroad companies, an authority. He is quoted all the more freely because his prejudices, if any he has, are with the railroads. Mr. Marshall M. Kirkman, in his work on "The Science of Railways," has expressed some very just observations upon the subject of competition, and we adopt them as our own:

"Without competition, every man would be at the mercy of his neighbor. Competition is the life of trade; its balance wheel—protecting and shielding all alike. It is to be encouraged. It should be unrestricted. The clash of contending influences, the strife of rival interests, should be given full play. Their effect is to better and to cheapen. Unrestricted competi-

tion is the greatest blessing a people can possess. Mr. George L. Lansing, who has given the subject of traffic considerable study, says that the effect of competition is to bear most strongly on those things in which there is the greatest trade. Thus, the smallest margin of profit, over the cost of production, is on the necessaries of life; the next smallest on the common comforts, and the largest on the luxuries. This effect is not caused by design. It results from the operation of natural laws of trade. The operation of the same laws produce the same effect on the rates of transportation. We find, as a rule, the lowest rates on the products of the farm, coal, wood, petroleum, iron and lumber, etc. The forces of competition, which tend to reduce the rates of transportation, co-operate in producing discrimination in favor of those things which are moved in the largest quantities, and which are, of course, consumed in the largest amounts. The aim of the carrier is to secure the traffic. To do this, he must make low rates on cheap commodities. This results in distributing the charge for transportation where it is most easily borne. Not only do necessaries have low rates, relatively, but necessaries consumed in the largest quantities have lower rates than those consumed in smaller quantities.

"These practices are not discretionary with the carrier. They have the binding force of principles. They are necessary conditions of business, of progress. It is not necessary to make them the subject of legislative enactments or other governmental interference. They are inherent. They are, however, subject to these limitations; in carrying out the principles that govern carriers, as well as other traders, equal intelligence will not be exercised in every instance. There will be sagacious traffic managers and dull traffic managers, just as there are shrewd merchants and stupid merchants, but they are all animated by the same idea, by like conscientiousness. What they lack in comprehension is not to be made good by extraneous action. Time will cure the evil in every case. Intelligence will finally govern here, as it does elsewhere. (pp. 34, 36.)

"Wherever competition is free, the rates of carriers will be such as to facilitate transportation, to increase production and consumption. Why? Because competitive influences overlook nothing. No interest is too small or too unimportant for it to notice and provide for. Traffic, that will only pay the carrier a molecule of profit, will be attended to as conscientiously as if involving millions; a traffic that will afford a margin of profit, be it ever so slight, he accepts with eagerness, if it is all it can pay. No one is harmed thereby, but both the community and the

carrier are benefited. Out of these small ventures a profitable trade oftentimes grows. The commerce of the world has grown up in this way. Particular items of traffic cannot be considered by themselves, but must be viewed in their relation to the whole. The fact that shippers are not charged relatively the same rate per mile, grows out of forces beyond the control of the carrier. He would gladly charge every one the same. The discrimination he is compelled to exercise stimulates production, cheapens cost, increases consumption.

"The rivalry of carriers also benefits. It begets better service, better roads, better cars, quicker transportation, greater safety." (pp. 68, 69.)

"Competition enforces equitable rates, and is the only guarantee we have of their maintenance. It secures the lowest possible rates (a) on the necessities of life, (b) on the comforts of life, (c) on luxuries and similar articles. It affects most favorably the poorer classes, whose purchases are confined to the common necessities of life. To disturb competition is to increase the burdens of such class, to make its struggle harder, to put the comforts of life farther and farther from its reach, to entirely deprive it of the hope of possessing a luxury." (P. 96.)

"Railway companies make no secret of the fact that in the entire absence of competition they are accustomed to charge higher rates than they usually do when they have competition to meet." (P. 124.)

If it is suggested, as it no doubt will be, that the consolidation will be of pecuniary advantage to the companies, we reply that such consideration must not weigh as against the public welfare. The sturdy and rugged honesty of the English Chancellor in the case of Atty. General v. Gt. N. Ry. Co., 4 DeGex & S., 93, is a befitting answer to such a plea:

"Considering, then, their conduct to be at once contumacious and otherwise illegal, to be wrongful against the plaintiff individually, wrongful against the Queen's subjects at large, and of, I had almost said, scandalous example; what an amount of inconvenience may be the consequence of acting against the defendant on this occasion. I think it right to deal with them according to their merits. The consequence may be to stop the railway. I answer again that it ought to be stopped, for it passes where it does by wrong."

The doctrine taught by the foregoing authorities, a doctrine which necessarily impresses itself upon the judgment of the thoughtful, is, that public policy condemns any combination of railroad interests which tend to the destruction of competition,

with its attending deterioration of service and oppressive burdens. We cannot fail to discern in the proposed arrangement a consolidation of interests and an aggregation of wealth which means, with absolute certainty, the monopolization of the carrying business of a great part of Minnesota and other states for many years to come. It will be the centralization of a power which no other company will presume to confront. The whole northern half of Minnesota will lie helpless at its feet. It is idle to talk of adequate public regulation, with private ownership. The public cannot, and the public will not, provide the necessary means and agencies for a complete and satisfactory regulation. The very hugeness of the enterprise means almost secure immunity from public interference. Until the public official shall sit side by side with the president of a railroad company, be present at the councils of boards of directors, and be possessed of a knowledge of all matters pertaining to railroad construction, the running of trains and the establishment of rates of tariffs, public regulation will at best be feeble and unsatisfactory. Our safety and protection in the past has been the effect of the competition between rival companies. That has generally proven a salutary regulation, much more potent than boards of railroad commissioners. A railroad company might laugh to scorn the order of a commission, but it had to meet the rate sheets of its rival.

Competition, be it remembered, in its most important feature, is not so much a reduction of rates at local points in a given state. Its most marked effect is seen and felt in the movement of great volumes of traffic between distant points. The Great Northern Railway Company is the natural rival and competitor of the Northern Pacific in the transportation of that vast volume of exchanges going on between the merchants at their eastern and western termini. The shippers of Minnesota whose goods go to the Pacific coast, are competitors of the shippers of Chicago and elsewhere, in their respective lines of business. They are deeply interestd in the question of rates, and hitherto they have been able to compel reasonable rates perforce of the sharp and active competition existing between these two great rivals. Are they prepared today to look with no concern upon the contemplated alliance? When the consolidation is effected, upon what will they stand in demanding more reasonable rates? They cannot threaten withdrawal of business. They can only threaten an appeal to the Inter-State Commerce Commission or some other public body.

Beyond the commission are the courts, to whom the company

may appeal and wherein it may protract for months, if not years, the final determination of the litigation.

If there is any one truth demonstrated by the experience of a generation in regard to railroading, it is that the life of commercial activity is inspired not by the orders of public functionaries, but by the results of competition.

The era of railroad building is in the main past. New rivals in a given field need not now be expected. Certainly, no new rival in the great field commanded by the two companies in question will appear in our generation. The words of Mr. Garfield may prove prophetic.

"We have tried," he says, "the laisez faire policy and it has failed; we have tried a meddlesome policy and it has failed also. We have now to meet the coming day when all the railways, having completed their several systems, may, and probably in their own interests will, combine together to take advantage of the public. In the face of this contingency we have simply to make our choice between two alternatives—either to let the state manage the railways, or let the railways manage the state." (Address James A. Garfield, 5 Leg. Gaz. 408.)

No good citizen will ever antagonize or seek to check a healthy development of railroad enterprise. So long as that development is restricted within legitimate limits; so long as it does not overleap the bounds of public safety, it is to be encouraged. But the very possibilities of the effectuation of the proposed agreement is enough to alarm us. It is the culmination of tendencies which the student of the times has been watching for years with painful solicitude. One vast railroad system is to be swallowed by its rival. As there never has been a time in the past, so will that time never arrive, when such gigantic power can with safety be lodged in single hands. Let us be instructed by the lessons of the day. When yet has a great railroad company monopolized an extensive field without subjecting the public dependent upon it to oppressive and exasperating exactions and conditions? The tendency everywhere is toward the centralization of railroad interests. Small companies are being absorbed by the more powerful; and the time is near at hand when the transportation business of the whole country will be under the complete control of a comparatively few companies. This means increased facility in, and a more pronounced tendency toward, the centralization of power for mutual protection.

CONCLUSIONS AND RECAPITULATION.

In the foregoing it has been attempted to present reasons against the effectuation of the proposed agreement, and to establish the following propositions:

1. That the act of 1856 is not a contract within the meaning of the Dartmouth College decision.

2. That it is a public law and subject to amendment at the legislative will.

3. That the words "in any manner so as not to impair or destroy the vested rights of the corporation," found in section 17, are words of precaution, a mere incident to the main purpose of section 17, with no legal force or effect in preventing the operation of the laws of 1874 and 1881.

4. That the consolidation contemplated by the special law of 1856 was, at most, but the consolidation of lines with a view to the continuous shipment of commodities, and did not contemplate the consolidation of the immense interests in question.

5. That the defendant had acquired no vested right in 1874, which the legislature was bound to respect, or which section 17 contemplated.

6. That the road it was authorized to consolidate with another road, it does not own, and hence has no authority, in any view of the case, to enter into the agreement.

7. That as the defendant is not the owner of any railroad, but operates only lines which have been organized under other charters, and whose respective entities are yet preserved, the consolidation of those roads would be a palpable violation of the laws of 1874 and 1881.

8. That the consolidation will constitute a great monopoly of railroad interests in a large portion of Minnesota, and in the states to the west of it, involving parallel and competing lines, and is therefore opposed to public policy and should be restrained by the injunction of the court.

H. W. CHILDS,
Attorney General of Minnesota.

Office Supreme Court U. S.
FILED.
DEC 14 1895
JAMES H. McKENNEY,
CLERK.

UNITED STATES
SUPREME COURT.

OCTOBER TERM, 1895.

No. 768.

THOMAS W. PEARSALL,
Appellant,

vs.

GREAT NORTHERN RAILWAY COMPANY,
Appellee.

Brief of Appellee.

M. D. GROVER,
C. K. DAVIS,
F. B. KELLOGG,
C. A. SEVERANCE,
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This is an appeal from a judgment of the United States Circuit Court, for the District of Minnesota, in equity. The appeal was taken to this court instead of the circuit court of appeals, because it is a case in which the laws of the state are claimed to be in contravention of the constitution of the United States.

The case was heard upon the bill and answer. The bill was filed by appellant, a stockholder of the Great Northern Railway Company, to restrain it from entering into an agreement with the holders of bonds secured by the second general mortgage, third general mortgage, and consolidated mortgage of the Northern Pacific Railroad Company.

The contract is set forth at length in the answer to the bill. By its terms the holders of the second, third and consolidated mortgage bonds of the North-

ern Pacific Railroad Company are, upon a sale in foreclosure proceedings of mortgages given to secure such bonds, to purchase, or cause to be purchased, the property and franchises of the Northern Pacific Railroad Company.

The company is to be reorganized or a new corporation is to be organized, which shall become vested with all the property and franchises of the Northern Pacific Railroad Company.

The new or reorganized company is to enter into an agreement with appellee for an exchange of traffic; for a joint use of tracks and terminals, and giving to appellee a right to bill and route its traffic from points on its line to points on the line of the new or reorganized company, which are not reached by the line of the appellee, and cannot be reached by it, except by the construction of hundreds of miles of railroad, parallel with the constructed line of such reorganized company.

In view of possible loss of income, growing out of such traffic agreement, and possible division of business, the bondholders will not agree that the new or reorganized company shall enter into such traffic agreement, except upon a guaranty by appellee of the payment of the principal and interest of bonds, to be issued by such new or reorganized company to a maximum amount, fixed by the contract.

The stockholders of appellee, in view of the responsibility assumed by such guaranty, will not authorize its execution, except upon condition that the stockholders of the new or reorganized company, transfer to them, or to a trustee for their use, one-half their holdings in the full paid stock of the company.

The grounds upon which the injunction was sought, are:

1. That some of the lines of the road of the Northern Pacific Company to be acquired by such new company, are parallel and competing with other lines leased or otherwise controlled by appellee.

2. That the special acts constituting the charter of appellee do not authorize it to enter into the traffic agreement, *though lawful in itself*, or to execute the guaranty, *though lawful in itself*, as a consideration for the traffic agreement, because the execution of such agreement and guaranty constitutes a condition or moving consideration for the transfer of one-half of the full paid stock of the new or reorganized company, by the stockholders of such company to the stockholders of appellee.

Though the legal title to such stock and its voting power will not rest in appellee, yet, since appellee may influence the action of its own stockholders in voting the stock of the new or reorganized company, the contract must be construed as giving appellee, if not the legal title to the stock, at least the control of such new company.

3. That appellee accepted, and was organized under, an act of the legislative assembly of the Territory of Minnesota, approved March 1st, 1856, which contains a reservation of a right of amendment as follows:

"Sec. 17. This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly in any manner not destroying or impairing the vested rights of such corporation."

That the state, therefore, has a right, at its option, to alter, amend or repeal, not only the act containing the reservation, but every act supplemental thereto, though such supplemental act confers new and additional powers and franchises, and contains no reservation of a right to amend or repeal.

4. That by the general laws of the state, (Chap. 29, Laws of 1874, and Chap. 94, Laws of 1881,) the acts constituting appellee's charter were amended so as to wholly take away the right expressly granted to it by said acts, to consolidate with or acquire the control of a parallel or competing line.

5. That appellee, upon its acceptance of the acts constituting its charter, *acquired no vested rights, powers or franchises which the state was bound to respect and none which the state has not a right*, by amendment or repeal, to impair or destroy.

6. That appellee does not operate a railroad of its own, but operates the lines of the St. Paul, Minneapolis and Manitoba Railway Company, under a lease, and that, therefore, it has no right to consolidate its own stock, franchises or property with the stock, franchises or property of another company.

7. That should the contract be executed a great monopoly would be created; competition would be destroyed and public policy subverted.

Shortly after the bill herein was filed an action was commenced in the district court of Ramsey county, Minnesota, by the Attorney General of the State, under a law of the state authorizing it, to enjoin the execution

of the agreement, for the same reasons and upon the same grounds as set forth in the bill herein. The court below, in this action, and Judge Kelly of the district court of the state, in the action brought by the Attorney General, concurred in holding that the agreement was, in legal effect, a partial consolidation of the two companies, and that should it be executed appellee would acquire, if not the legal title to the stock of the new or reorganized company, at least the control and management of such company, contrary to the provisions of the laws of the state of 1874 and 1881. The opinion of the district court is printed in appellant's supplemental brief.

The state court held that the acts constituting appellee's charter did not give it power or authority to acquire the ownership of, or to consolidate with or control a parallel or competing line. Further, that the right to amend, as expressed in section 17 of the act of 1856, is not limited or qualified by the words "*in any manner not impairing or destroying the vested rights of the corporation*," and that the state has a right, *at any time, and in any manner which it may deem exped. ient*, to impair or destroy any right, immunity, power or franchise granted by the act of 1856, and all acts supplemental thereto, though they confer new and additional powers, and contain no reserved right of alteration, amendment or repeal.

The United States court held that among the valuable franchises and privileges granted by the acts constituting appellee's charter was a right to construct railroads, or, instead of constructing, to lease or become the owner of railroads; also the right to consolidate its

stock and property with the stock and property of parallel and competing lines; that appellee, by virtue of its right, power and franchise to consolidate with or become the owner of, a parallel or competing line, has authority to acquire the stock of such line, or its control; that such rights became vested in appellee immediately upon the acceptance of the acts constituting its charter; that the state had no authority, by amendment, to impair or destroy such vested rights; and that the laws of the state of 1874 and 1881, were, therefore, inoperative as being in violation of section 10, article 1 of the constitution of the United States, which provides that no state shall pass any law impairing the obligations of a contract.

The charter of appellee consists of a series of special laws extending through the period from 1856 to 1885. The material acts, so far as this case is concerned, are the original act of March 1st, 1856, under which appellee was organized, (page 39, R.) and the act of February 28th, 1865, (page 49, R.) This last act grants new and valuable powers and franchises and it contains no reservation of a right to amend or repeal.

For convenience we set forth, we hope not too much in detail, the substance of the pleadings, the proposed agreement, and statutes and authorities to which reference is made.

BILL AND ANSWER.

1. The Great Northern Railway Company is a corporation existing under acts of the legislature of the late territory and present state of Minnesota, as follows:

"An Act to incorporate the Minneapolis and St. Cloud

Railroad Company, approved March 1st, 1856." (Page 39, 40, R.)

"An Act to amend an act, entitled, 'an act to incorporate the Minneapolis and St. Cloud Railroad Company,' passed March 1st, 1856," approved February 23rd, 1864. (Page 47, R.)

"An Act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter Railroad, or any other railroad in southern Minnesota," approved February 11, 1865. (Page 47, 48, R.)

"An Act to amend an act entitled, 'an act to incorporate the Minneapolis and St. Cloud Railroad Company,' approved March 1st, 1856, and to repeal certain portions of an act amending the charter of said com pany, passed February 23rd, 1864," approved February 28th, 1865. (Page 49, 55, R.)

"An Act to amend an act entitled, 'an act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter Railroad, or any other railroad in southern Minnesota," approved March 5th, 1869. (Pages 56 and 57, R.)

"An Act to amend the charter of theMinneapolis and St. Cloud Railroad Company," approved March 6th, 1869. (Page 57, R.)

"An Act to amend the charter of the Minneapolis and St. Cloud Railroad Company," approved March 2, 1870. (Pages 57, 58, R.)

"An Act to extend the time for the construction and completion of a branch of the Minneapolis and St.Cloud Railroad Company," approved March 11, 1879. (Pages 58, 59, R.)

"An Act to amend an act entitled, 'an act granting swamp lands to aid the Minneapolis and St. Cloud Railroad Company in building branches to connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter Railroad, or any other railroad in southern Minnesota,' approved February 11, 1865, as amended," approved March 10, 1885. (Page 61, R.)

2. Each of the several acts were accepted immediately after the passage thereof, and they have ever since remained in full force and effect as enacted. (Par. 2, Bill, p. 2, R.)

3. Under such acts and prior to the year 1890, the Minneapolis and St. Cloud Railroad Company had constructed and put into operation, that portion of its line of railroad authorized to be constructed and operated under said acts, which extends from St. Cloud, in the state of Minnesota, eastwardly, to the town of Hinckley in the state of Minnesota. The residue of said branch authorized by the said several acts of the legislature to be constructed from St. Cloud to the waters of Lake Superior was, in pursuance of the authority conferred by said acts, in the year 1887, constructed and put into operation, so that the whole of said branch from St. Cloud to Lake Superior has been constructed and put into operation. (Par. 3, 4, Bill; page 2, R.)

4. In 1889, the Minneapolis and St. Cloud Railroad Company, under said acts of the legislature, duly changed its name to the Great Northern Railway Company, which name it has ever since borne and now bears. (See act approved March 6, 1869, page 56, Record.)

5. Prior to February 1st, 1890, the St. Paul, Minne

apolis and Manitoba Railway Company, a corporation organized and existing under the laws of the late territory and present state of Minnesota, but authorized to build and operate railways also in the late territory of Dakota and present states of North Dakota and South Dakota, and the late territory and present state of Montana, and in the states of Idaho and Washington, had built and put into operation railways in the said several states, having an aggregate length of over three thousand miles, and extending from St. Paul, in the state of Minnesota, to Puget Sound, in the state of Washington, with branches as particularly set forth in the bill. (Par. 6, Bill, page 3, R.)

In February, 1890, in pursuance of the laws of the state of Minnesota, and of said other several territories and states, the St. Paul, Minneapolis and Manitoba Railway Company leased at a fixed rental to the Great Northern Railway Company, appellee, for a period of 999 years from said date, all the railroad which it had theretofore built and then owned, or which it might thereafter build or acquire. Since the execution of said lease the appellee has operated and is now engaged in operating and maintaining such line of railway under said lease. (Par. 4, Bill; page 3, R.)

6. The appellee had, prior to March 1st, 1894, issued its preferred capital stock to the amount of twenty-five millions of dollars; appellant was at the time of the filing of the bill, the bona fide owner of more than five hundred shares of one hundred dollars each. (Par. 7, Bill; page 7, R.)

7. The Northern Pacific Railroad Company was

organized under acts of congress particularly set forth in paragraph 8 of Bill; page 5, Record.

It had, prior to January 1st, 1893, made and issued its capital stock to the amount of over eighty millions of dollars and several series of bonds secured by mortgages on its railway and other property, and of its franchises, including its franchise to be a corporation. The mortgages are referred to, and the amounts secured by them stated in the Bill. (Par. 10, Bill; page 7, R.)

8. THE PROPOSED ARRANGEMENT; (Pages 13, 14, 15, 16, Record.)

"On or about the 18th day of October, 1893, the Farmers Loan and Trust Company, as trustee named in the mortgages executed by the Northern Pacific Railroad Company, to secure the second, third and consolidated mortgage bonds, referred to in Paragraph 10 of the bill of complaint, commenced an action in the circuit court of the United States for the Eastern District of Wisconsin, by filing its bill for the foreclosure of said mortgages and the appointment of receivers of the property, franchises and effects of the Northern Pacific Railroad Company. Afterwards bills were filed for a similar purpose in the different circuit courts of the United States, having jurisdiction, by reason of the extension of the lines of said company into and through the territory within the limits of said circuits. Such actions are still pending and in them receivers were appointed who are now in possession of the road.

The line of appellee extends to Seattle, or to a connection with Seattle, on Puget Sound. It does not extend to Winnipeg, in Canada, or to Tacoma and many other points in Washington, or to Portland and other points in Oregon, all of which are reached by the line of the Northern Pacific Company.

It extends to the boundary line between the United States and Canada at Neche and St. Vincent, over four hundred miles from St. Paul. The lines to said points were constructed with a view of reaching Win-

nipeg, in Canada, and obtaining traffic, both passenger and freight, from that city and other Canadian points.

At the present time it can acquire no right to extend its line of railway to Winnipeg, or to any other Canadian points, and it has no means of sharing in the traffic of the city of Winnipeg and other Canadian points tributary to Winnipeg, except by a connection with the line of railway owned and controlled by the Canadian Pacific Railway Company, and under an arbitrary division of earnings and upon onerous terms and conditions. It will operate to the advantage of the appellee by increasing its traffic and earnings, with but little increase over present expenses if it can acquire the right to bill and route its passengers and freight over the line of the Northern Pacific Company to Winnipeg and other points in Canada, which are reached by its line. It cannot acquire such right by way of its present connections with the Canadian Pacific Railroad Company, or under existing circumstances, upon reasonable and fair terms, and it is necessary to its interests that it should enter into a traffic agreement with the Northern Pacific Railroad Company, in order that it may reach Winnipeg and other Canadian points.

The cities of Tacoma and Portland are important shipping points for maritime commerce upon the Pacific Ocean, and afford a large traffic to the different transportation lines by rail and water with which they are connected.

In many other instances, in the states of Minnesota and Montana and elsewhere, an exchange of traffic between the said railway systems at the nearest junction point, would greatly facilitate the movement and reduce the cost of handling traffic and in many ways operate to the profit and advantage of said companies, especially in connection with the shipment of lumber, coal, minerals and like class of commodities.

It would be greatly to the advantage of defendant if its line of railway extended to said cities of Portland and Tacoma, and to other points in Washington and Oregon, reached by the line of the Northern Pacific Railroad Company, and defendant expects and proposes to extend its line of railway to said points, unless it

can make an arrangement by which it can reach said points, and share in the traffic afforded by them, as under existing conditions it cannot do.

An extension of defendant's line to Portland would require the construction of nearly two hundred miles of railway, and to reach Portland, Tacoma and other points, which would afford a large and profitable traffic would require the construction of over four hundred miles of railroad at a very large cost, nearly all of which, owing to the topography of the country, must necessarily be constructed on a line substantially parallel with the existing line of the Northern Pacific Company.

The construction of necessary buildings and tracks and the acquiring of necessary terminal grounds in said cities would cost a very large amount and it would be to the advantage of this defendant and to the public should an arrangement be entered into for an interchange of cars and traffic between said lines of railroad under reasonable, fair and legal terms and conditions, under which appellee could bill and route its traffic from points on its said line and by way of connection with the Northern Pacific Company to said cities and other points on its line.

At Spokane, in the State of Washington, a city having a population of about thirty thousand people, the Northern Pacific Company owns a commodious passenger station, terminal grounds and land connected therewith. Appellee, at the present time, has no passenger station of its own with convenient tracks and facilities in said city. It is, at present, making use of the depot and terminal facilities of another company, and it will be necessary for it, at a large expense, in the near future, to construct a station and provide terminal facilities for its own use, unless it arranges with the Northern Pacific Company for the joint use of depot facilities as a union station.

There are many points where a joint use of stations would be advantageous in point of convenience and economy. The tracks of appellee and the Northern Pacific Company between St. Paul and Sauk Rapids, for a distance of about eighty miles, are parallel, occupying substantially, the same right of way, being but a few

feet apart. The traffic of the large system operated by said companies, respectively, and consigned to Minneapolis and St. Paul, or to connecting lines at said points, is concentrated to a very large extent upon said tracks between said points, and must be moved over them to said cities or to connecting lines. The volume of such traffic will, in the near future, be such as to render it unsafe and unprofitable to both companies to handle the traffic that must necessarily pass between said points by said companies, respectively, over said tracks as single tracks. The use of said tracks as double tracks, all of the trains of said companies, respectively, moving in the same direction on the same tracks, would greatly facilitate the handling of business and promote the convenience, economy and safety of the public.

9. With the approval of a large majority of its stockholders and the holders of a majority of the several classes of outstanding bonds, secured by the said second, third and consolidated mortgages of the Northern Pacific Railroad Company, appellee proposes to carry out an arrangement in substance as follows:

The holders of the said several classes of bonds shall obtain a decree of foreclosure in said actions, and for the sale of the railroad property and franchises of the Northern Pacific Railroad Company, including its franchise to be a corporation, subject to the said divisional and general first mortgages mentioned in par. 10 of the bill, and shall cause the same to be bid in and be purchased by a committee of bondholders or their agents for the benefit of all the holders of said outstanding bonds, secured by the mortgages so foreclosed, and shall cause the reorganization of the said railway franchises and property, as a new corporation, either under the said acts and joint resolutions of congress, relating to the Northern Pacific Railroad Company, or under some other proper and sufficient legislation of the United States, or of some one or more states. Upon such foreclosure sale and reorganization, the reorganized company may issue its bonds to an amount in the aggregate, of one hundred million dollars, or over; and its full paid capital stock of one hundred million, the appellee to guaranty for the benefit of the holders

of such bonds, the payment of the principal thereof, together with interest thereon, to an amount in the aggregate of such interest guaranty not to exceed six million two hundred thousand dollars per year, which guaranty shall, if required by said reorganized company, be written and executed upon the back of each of said bonds.

Among other good and valuable considerations for such guaranty and as a compensation for the risk to the stockholders of defendant company, which may result by reason of said guaranty, in the way of a possible diversion of a portion of the earnings of the defendant, to make good its guaranty, the said reorganized company shall transfer or cause or procure to be transferred BY ITS STOCKHOLDERS, TO THE SHAREHOLDERS OF THE DEFENDANT COMPANY, OR TO SOME PERSON OR CORPORATION AS TRUSTEE FOR THEIR USE, ONE-HALF PART OF THE CAPITAL STOCK OF SAID REORGANIZED COMPANY.

The reorganized company shall join with the defendant in providing reasonable and adequate facilities for an interchange of cars and traffic, between their respective lines, and shall interchange traffic with defendant and operate its trains to that end upon reasonable, fair and lawful terms, under joint tariffs, or otherwise. The defendant shall have the right to bill and route its traffic, passenger and freight, from points on its line, by way of such connections as now exist or may hereafter be constructed, over the line of said reorganized company, to Winnipeg, Tacoma, Portland, and all points in the different states through which the line of the Northern Pacific Railroad extends, and not reached by the line of the defendant.

The appellee shall have the right to make use of the depot and terminal facilities of the reorganized company at Spokane Falls and other points, where such use shall be found to be convenient and economical, jointly with that company and upon reasonable, fair and lawful terms, which shall insure to the appellee a large saving on the cost and expense which it must otherwise incur by constructing and operating depots and terminals of its own.

II.

QUESTIONS FOR DECISION.

Under the facts stated and admitted appellee contends for the following propositions, upon which the decision of the case turns:

1. That it has *express and implied authority* under the acts of March 1st, 1856, (P. 39, R.) and of February 28th, 1865, (P. 49, R.) to enter into the proposed traffic agreement and pay for the rights and privileges it acquires by a guaranty of the bonds of the new or reorganized company; such traffic agreement is not only lawful but expedient, as being beneficial to the parties and to the public; that such agreement and guaranty do not become unlawful because they constitute the condition or moving consideration for the transfer, by the stockholders of such new or reorganized company, to the stockholders of appellee, of one-half of the full paid stock of such company; that its stockholders, may, by purchase, gift, or in any lawful manner, acquire the title to the stock of such new or reorganized company; that the power to vote the stock is in the holders of the legal title to it, and that by such transfer, under the conditions of the proposed agreement, appellee does not acquire the legal title to the stock, or the right to vote it; neither does it acquire the control of such new or reorganized company, and the transaction is, *therefore not forbidden by any law of the state.*

2. That no right was reserved to amend its original act of incorporation, being the act of March 1st, 1856,

except as expressed in section 17 of that act. The right thus reserved is to "*amend in any manner not impairing or destroying the vested rights of said corporation.*" If the legal effect of the proposed agreement is, as the court below held, to give appellee the control of the new or reorganized company, the right to acquire such control was granted as a valuable power and franchise, by the act of March 1st, 1856, and such right became vested immediately upon the acceptance of the act. The laws of 1874 and 1881 impair such right, and are, therefore, inoperative.

3. That the act of March 1st, 1856, was accepted shortly after its adoption. New and most valuable rights and franchises were granted by the supplemental act of February 28th, 1865. Under this act appellee is authorized to consolidate with or acquire the ownership and control of parallel and competing lines. The right thus granted was not impaired by such laws of the state and cannot be impaired or taken away because there is in this act no reservation of a right of alteration, amendment or repeal.

In considering these questions, it is proper to refer to the state of things existing in March, 1856, when the original act of incorporation was adopted. (Binghampton Bridge case, 3 Wall. 51; Boston and Lowell Ry. Co. v. Ry. Co., 2 Gray. 1). St. Paul was then more than three hundred miles from the nearest railroad. The territory was almost a wilderness. Its population was small. It was without capital or business and its resources were undeveloped. There was not a mile of railroad within its boundaries. The construction of

railroads was an imperative necessity to the development of the resources of the state. Congress was being importuned for land grants. The people and the legislature of the territory were willing and did offer the largest inducements within their power for the investment of capital in railroad construction. How soon railroads would prove remunerative to their owners was a matter of conjecture and experiment. Large and most valuable immunities, privileges and franchises were tendered to railroad companies but only ten miles was constructed up to the beginning of 1863, notwithstanding such tender of franchises and the aid afforded by government land grants and state bonds to the extent of $5,000,000 none of which aid was granted to appellee.

On looking into the acts constituting the charter of appellee we find that most valuable powers and franchises are granted and that the legislature contemplated, not simply the construction of a line of road from Minneapolis via. St. Cloud, to the mouth of the St. Louis River, (now Duluth) but the building up of a large railway system. These acts not only grant a right to locate and construct main and branch lines in directions named, *but also a right to construct any number of branch lines to connect with the line of any other railroad company, then chartered or thereafter to be chartered.* Right is also given to lease railroads, to purchase and adopt railroads, and to consolidate, not only stock, but all property and franchises, with the property and franchises of any other railroad company *within or without the state.*

LOCATION OF LINES UNDER CHARTER.

By Section 2, Laws of 1856, the company was authorized,

"To construct a railroad with one or more tracks, from Minneapolis via. St. Cloud, to the mouth of the St. Louis River (now Duluth)."

By Section 3, "A branch line from Minneapolis, by way of West St. Paul, to some point to be selected by the company on the Iowa state line."

By Section 6, "Said corporation is hereby authorized and empowered to connect its road, or branches, with the road of any railroad company, or companies, in the territory or future state of Minnesota, that are now chartered or may hereafter be chartered."

By Section 2 of the Act of February 11th, 1865, (P. 47, R.) "A branch from St. Cloud to connect with the Winona and St. Peter Railroad, or any other railroad running in southern Minnesota, from east to west, and to strike the Minnesota River at St. Peter, or some other point between St. Peter and the mouth of Red Wood River."

By Section 4, Laws of 1869, (P. 57, R.) "A branch from St. Cloud, up the Sauk Valley, to some point upon the St. Paul & Pacific railroad (now the St. Paul, Minneapolis and Manitoba railroad) or to some point on the Red River of the North by way of Alexandria, and all the rights, franchises, privileges and immunities heretofore granted to said company, upon the main line, or any branch thereof, shall apply to said branch road as fully to all intents and purposes as the rights and privileges heretofore granted to said company."

GENERAL LAWS OF THE STATE.

By Chapter 31, Laws of 1881, it is provided that title one of Chapter thirty-four, General Statutes of 1878, be amended by adding thereto the following:

Sec. 1. "Any railroad corporation heretofore or hereafter organized pursuant to any law of this state may exercise all its rights, franchises and privileges in any other state or territory in the United States, under and subject to the laws of the state and territory where it may exercise the same, and may use any additional or other powers or privileges applicable to the carrying of persons or property by railroad or steamboat in such state or territory ,or otherwise, applicable to the doings of such corporation in said state or territory.

Sec. 2. "Any railroad corporation may, under the provisions of this chapter, extend its railroad from any point named in its charter or articles of incorporation, or may build branch railroads, either from any point on its line of road, or from any point on the line of any other railroad, between such points connecting with its line of road, or to be connected therewith, or with any line of railroad such corporation may have acquired the use of under lease for a term of not less than ten years. Before making such extension or building such branch roads such corporation shall, by resolution of its board of directors, to be entered into the record of its proceedings, designate the route of such extension or branch; a copy of the plat or map thereof, duly certified by such corporation, under the seal thereof, etc., shall be recorded in the office of the secretary of state. * * * Whereupon such corporation shall have and exercise, with respect to such extension or branch, ALL THE RIGHTS, POWERS, FRANCHISES AND PRIVILEGES POSSESSED BY SUCH CORPORATION PERTAINING TO ITS MAIN OR OTHER LINE OF RAILROAD; it may receive municipal aid," etc.

OTHER STATES.

Under the laws of North Dakota, Montana, Washington and Oregon, any railroad corporation organized under the laws of the United States, or of any state or territory, whose road shall reach or intersect the boundary line of such states at any point, may extend its line into such states and build branches, etc.

Compiled Laws of North Dakota, 1887, Sec. 2997.
Montana Code, Sander's Edition, Sec. 910.
Laws of Washington, 1890, Chap. 17, Sec. 1.
Hill's Laws of Oregon, Sec. 32, P. 1456.

By Section 13, Act of 1856, it is authorized:

"To contract with any other railroad company or corporation with whose road its road may come in contact for the crossing or connection with such road and for the joint use thereof."

Thus, instead of constructing railroads, as authorized, it may, upon such terms as may be agreed upon, become part owner of a railroad, and may also adopt, as its own, any railroad running in the same general direction with either the main or branch line of any road which *it is authorized to construct; or it may make use of any portion of such railroad.* In other words, it may acquire a right to run its locomotives and cars over such road, to exchange traffic with it, or to route and bill its traffic over it, or adopt it as its own.

Under the act of March 6, 1869, (P. 57, R.) it may construct a branch line from St. Cloud via Alexandria, to the Red River. This, with its constructed line from Lake Superior to St. Cloud, would give it a continuous

line from Lake Superior across the state of Minnesota to the Red River, which is the boundary line between the states of Minnesota and North Dakota.

The line of the Northern Pacific Company extends from Lake Superior to the Red River of the North, crossing it at Moorhead. Appellee, instead of constructing a branch line from St. Cloud to the Red River, may, to save the expense of such construction, upon such terms as may be agreed upon, adopt the whole or a portion of the existing line of the Northern Pacific Railroad Company, or acquire a right to use its line. Appellee may construct such branch north from Alexandria to intersect the line of the Northern Pacific Company. It may, much of the way, locate such line parallel with, and contiguous to, the constructed line of the Northern Pacific Company; and may, therefore, adopt and lease such line. The line of the Northern Pacific Company, or a line owned by it, extends from St. Cloud to Staples, a point of connection with its main line from Lake Superior to the Red River. The proposed traffic arrangement may, therefore, be lawfully entered into by appellee under Section 6, Act of 1856, (P. 40, R.) and under Section 12 (P. 45, Record), as amended by section three, Act of 1865 (P. 51, Record), and under Section thirteen, Act of 1856, (P. 55, Record).

RIGHT OF CONSOLIDATION.

There is no express provision in the act of March 1st, 1856, giving such right. The right to become part owner of the railroad of another company, or to adopt such railroad as its own, the right to acquire the sole

use or the joint use of the railroad of another company upon such terms and conditions as may be agreed upon, carries with it the right to have a voice in the management and control of such company, and includes the right to become the owner of an interest in its capital stock, or the whole of it.

The power and franchise of consolidation, not only of its capital stock, but of all its property, effects and franchises, with the stock and property of another company, either within or without the state, is granted by the act of March 28th, 1865, in most broad and comprehensive terms, and the right may be exercised upon such terms and conditions as the companies may agree upon.

Under its charter, instead of constructing lines of railway as authorized, appellee may lease, or become part owner of or adopt another line. It may make a contract for the sole or joint use of another line, or consolidate its stock and property with the stock and property of any other line, whether running in the same general direction or not, or whether within or without the state.

By Section one, Act of 1856,

It is "capable of acquiring, by purchase, gift, grant, devise or otherwise, and of holding and conveying all such estate and property, real and personal, as may be necessary or convenient to carry into effect the objects and purposes of this act and of said corporation."

By Section six,

"It is authorized and empowered to connect its road, by branches, with the road of any railroad company or companies, in the territory or future state of Minnesota that are now chartered or may hereafter be chartered or to become part owner or lessee of any railroad in said territory."

By Section 12, of the Act of 1856, (P. 45, Record), as amended by the act of March 28th, 1865, (P. 51, Record), it is

"Authorized and empowered to connect with or to adopt as its own, on such terms as may be agreed upon, any other railroad running in the same general direction, with either of its main lines, or any branch road which said corporation is authorized to construct, and where there may be any portion of another railroad which may be so used by this company or corporation, it shall not be bound to build such portion of its own road or branches, so long as it may use the portion of any other road, which may answer the same purpose."

By Section 8, Act of 1865, (P. 49, Record) is is provided

"That said Minneapolis and St. Cloud Railroad Company, and each of its branches being organized as aforesaid, shall have the power to consolidate the whole, or any portion, of its capital stock, with the capital stock, or any portion thereof, of the roads or branch roads of any other railroad corporation, or company, having the same general direction and location, OR TO BE MERGED THEREIN BY WAY OF SUBSTITUTION, UPON SUCH TERMS AND CONDITIONS AS THE TWO COMPANIES MAY AGREE, BY THE CONSENT OF THE MAJORITY OF THE STOCKHOLDERS OF EACH COMPANY," etc.

ENLARGEMENT OF POWER TO CONSOLIDATE.

By Section 9 the power to consolidate is not limited to a railroad corporation having a road in the same general direction or location. This section provides:

"Said Minneapolis & St. Cloud Railroad Company may consolidate any portion of its road and property, and each branch, being organized as aforesaid, may consolidate the whole, or any portion of its road and property, with the franchises of any other railroad company, or any portion thereof, upon such terms and conditions as said companies, or a majority of the di-

rectors thereof, with the consent of the holders of a majority of the stock, respectively, may agree."

FURTHER ENLARGEMENT OF POWER TO CONSOLIDATE.

Section 12 provides:

"The Minneapolis & St. Cloud Railroad Company, and each branch thereof, having a separate organization as above provided for, may consolidate the whole, or any portion of its main line or branch railroads, and all the property, rights, powers, franchises, grants and effects pertaining to such road, with the rights, powers, franchises, grants and effects of any other railroad company, EITHER WITHIN OR WITHOUT THIS STATE, UPON SUCH TERMS AND CONDITIONS AS SUCH COMPANY, OR BRANCH ORGANIZATION, OR A MAJORITY OF THE DIRECTORS THEREOF, RESPECTIVELY MAY AGREE: AND THE RAILROAD COMPANY IN WHICH SUCH RAILROAD SHALL BECOME VESTED BY SUCH CONSOLIDATION SHALL THEREAFTER HOLD AND ENJOY THE RIGHTS, GRANTS, POWERS, FRANCHISES IN RESPECT TO SUCH COMPANY, WHICH THE COMPANY POSSESSED BEFORE THE CONOLIDATION."

"That the Minneapolis & St. Cloud Railroad Company, or branch organization thereof, shall remain vested with all its other rights, powers, privileges and franchises."

CONSTRUCTED LINE OF APPELLEE.

Its line from St. Cloud to Hinckley was constructed about 1880. From Hinckley to Lake Superior the line was completed under a branch organization in 1888, (Par. 3, 4, Bill., P. 2, Record).

The reasons why the line of appellee was not con-

structed from Minneapolis to St. Cloud, and why the line from that point to Lake Superior was not constructed at an earlier date, are

(a) Appellee had no land grant. March 3rd, 1857, an act of congress was adopted granting to the territory land to aid in the construction of a railroad from Stillwater via. St. Paul and Minneapolis to St. Cloud and the Canadian boundary line. In 1858, the state by its constitution then adopted, authorized a loan of its credit to aid in the construction of such railway, and the state issued its bonds for that purpose. After repeated failures, with the aid thus tendered, ten miles of railroad were completed from St. Paul to Minneapolis in 1862, and the line to St. Cloud in 1866. About the same time the Lake Superior and Mississippi Company (now the St. Paul & Duluth Company) was organized with authority to construct a line from St. Paul to Duluth, or the mouth of the St. Louis River. It received large and valuable grants of land, not only from the general government, but from the state, with the aid of which, and of local bonds issued by towns and cities, the line was completed in 1867. Shortly afterwards it failed and those who held the bonds of the company were compelled to surrender their bonds in exchange for stock, and a mortgage was executed to raise money to pay its floating indebtedness and provide means for its operation.

(b) The two successors companies authorized to construct the railroad from Stillwater via St. Paul and Minneapolis to St. Cloud, also failed and after years of litigation, the property rights and franchises

were sold in foreclosure proceedings. Under the circumstances, necessary money could not be raised with which to construct the line of appellee, and the business of the country did not justify the construction of its line until the portion of it was constructed from St. Cloud to Lake Superior.

(c) From 1856 to 1885 legislative acts were passed amending the original act of incorporation, which amendments were accepted by it, and supplemental acts were passed, granting to it new and most valuable powers and franchises. It sold to the St. Paul, Minneapolis and Manitoba Company the line constructed by it from St. Cloud to Hinckley which is now operated by it under the lease from that company. The line from Hinckley to Lake Superior was constructed by a sub-company, organized under the provisions of the act of February 28th, 1865, and is now being operated under the acts constituting appellee's charter, with all the rights, privileges and franchises granted by it. Appellee owns all the stock of such sub-company.

Appellee may at this time, locate and construct branch lines in the direction and to the points named in the acts constituting its charter. It may construct a line from St. Cloud to the Red River, and for a great part of the way parallel and contiguous to the line of the Northern Pacific Railroad. It may construct as many branches as it desires from the line of the railway extending from Hinckley to Lake Superior, to connect with any other railroad in the state.

It is now operating the line of the St. Paul, Minneapolis and Manitoba Railway Company, under a lease,

the leasehold term being 999 years from February, 1890. Its leasehold interest is a valuable property right. For all purposes of traffic, joint use, running rights, crossings or connections with the railroad of another company, the leased line is to be regarded as its own. It has issued and sold at par $25,000,000 preferred stock. (Par. 7, Bill., P. 5 record.) It is operating under such lease, and may therefore, make such use and disposition of its stock and property under its charter as will enable it to economically operate the leased line and realize an income therefrom. By increasing its traffic it can better serve the public and transact its business at less cost.

SUMMARY OF CHARTER POWERS.

Appellee may locate and construct a railroad from Minneapolis to St. Cloud, parallel with existing lines. From Minenapolis, by way of West St. Paul to the Iowa state line, parallel with existing lines; from St. Cloud to connect with the Winona & St. Peter Railroad, or any other railroad running in Southern Minnesota, from east to west, and to strike the Minnesota river between St. Peter and Redwood river; from St. Cloud to the Red River, and to connect its road by any number of branches which it may desire to construct, with the road of any railroad company or companies in this state, that are now chartered or may be hereafter chartered. It may under general laws construct a line across intervening states to Puget Sound and the Pacific Ocean. It may also construct branches from its leased line in Washington to Tacoma in that state ,to Portland in Oregon, and to all points reached by the line of the

Northern Pacific Company and not by its own. Instead of constructing lines it may become the part owner of a line in Minnesota located where it had authority to construct one; or it may adopt such line as its own, or acquire the sole or joint use thereof. It may construct its road or branches in sections. A sub-board of directors may be elected and a new name adopted for each section, and such sub-board becomes vested in the administration of such section with all the rights, powers and privileges conferred by its charter. It may consolidate the capital stock pertaining to its main line or to its branches in whole or in part with the capital stock of another company having a line running in the same general direction as its own. It may consolidate not only its stock, but its road, property, rights, powers, franchises, grants and effects with the rights, powers, franchises, grants and effects of *any other railroad company within or without the state*, and all this may be done upon such terms and conditions as such companies or a majority of the directors thereof may agree upon.

ACCEPTANCE OF THE CHARTER.

By Section 9, of the Act of 1856, (P. 44, Record), it is provided:

"If the incorporators named in this act DETERMINE TO ACCEPT THIS CHARTER THEY SHALL APPOINT THREE OR MORE OF THEIR NUMBER OR SUCH OTHER PERSON OR PERSONS AS THEY MAY DEEM PROPER, AS AGENTS, TO RECEIVE SUBSCRIPTIONS TO STOCK. * * * * * * * EVERY PERSON WHO SHALL SUBSCRIBE FOR ANY STOCK OF THE CORPORATION SHALL AT

THE TIME OF SUBSCRIBING PAY TO THE AGENT TWO PER CENT OF THE AMOUNT SO SUBSCRIBED."

By Section 10:

"Whenever one hundred thousand dollars shall have been subscribed to the stock and two per cent paid thereon, as aforesaid, the stockholders shall meet and proceed to elect directors."

By the act approved February 28, 1865, (P. 49, Record), the acceptance of the act of 1856 is recited and recognized and the organization under that act ratified and confirmed, as follows:

"Section 1. That, whereas, the incorporators or persons named in the first section of the act of the legislature of the late territory of Minnesota, entitled 'An act to incorporate the Minneapolis and St. Cloud Railroad Company, and approved March 1st, 1856, did, in the manner prescribed by said act, open books and receive subscriptions to the capital stock of said railroad company to an amount exceeding one hundred thousand dollars, upon which said stock so subscribed to, the amount or sum of two per cent was actually paid in on or before the 15th day of March, 1857, and whereas, the said stockholders of said company have ever preserved and maintained the status given to them by their said several subscriptions and payments (no further assessments having been made on said stock); and whereas, the holders of said stock have since organized said company by the election of a board of directors and the other officers named in said act, in the manner therein pointed out, and have received additional subscriptions to the capital stock of said company, upon all of which two per cent thereof has been actually paid into the treasury of said company, and said company is, and ever has been, desirous of availing themselves of all the franchises granted by said act, and, whereas, without the consent of said stockholders, or said company, the legislature of the state of Minnesota, by an act approved February 23, 1864, and entitled 'an act

to amend an act entitled 'an act to incorporate the Minneapolis and St. Cloud Railroad Company,' passed March 1st, 1856,' did undertake to amend said first mentioned act by inserting as incorporators persons other than those named as corporators in said first mentioned or original act, and other than the stockholders, aforesaid; and did also in said amendatory act in like manner declare the said persons named therein, their assigns, survivors, and each of them, directors of said Minneapolis and St. Cloud Railroad Company, or said corporation, for a term of one year from the passage of said amendatory act, and until one hundred thousand dollars stock should be subscribed, and taken, etc:; and, whereas, no stock has ever been subscribed to the capital stock of said railroad company under or pursuant to, or by virtue of said amendatory act:

Therefore, the first and third sections of said amendatory act (being the act of February 23, 1864, P. 47, Record,) are, and each of them is, hereby repealed and all power and authority conferred or attempted to be conferred by said sections, or either of them, as against the incorporators or persons named in the act thereby amended, or their associates, successors, or the organization in this act first named, is hereby revoked and annulled."

"Sec. 2. The first section of said Act, entitled, "An Act to incorporate the Minneapolis and St. Cloud Railroad Company" passed March 1st, 1856, is hereby reenacted the same as if it was here repeated at length, but the reenactment thereof shall not, in any manner, injuriously affect the organization of said company first mentioned and referred to in this act, which said organization of said company is hereby, in all respects, legalized and confirmed, and declared to be the only legal representative of said company or corporation, AND SHALL BE RECOGNIZED AND TREATED AS SUCH IN ALL THE COURTS OR TRIBUNALS OF THIS STATE, OR ELSEWHERE."

The bill alleges the acceptance of this act. (P. 2, Record.)

POINT ONE.

The Traffic Agreement.

1. The agreement, so far as it relates to an interchange of traffic; to a joint use of tracks and terminals and to through billing and routing of traffic from points on the line of appellee to points on the line of the Northern Pacific Railroad Company, not reached by its line, is valid. It is authorized by express provisions of the acts constituting appellee's charter and is in accord with public policy.

Section 3 of the Interstate Commerce Act, provides:

"Every common carrier, subject to the provisions of this act, shall, according to their respective powers, afford all reasonable, proper and adequate facilities for an interchange of traffic between their respective lines."

Chap. 108, Laws of 1893, state of Minnesota, provides:

"All railway companies doing business in this state shall, upon the demand of any person or persons, establish reasonable joint through rates for the transportation of freight between points on their respective lines within the state. Car-load lots shall be transferred without unloading in the cars in which such shipments are made, unless such loading shall be done without charge therefor to the shipper or receiver."

Stewart v. The Erie and Western Transportation Co., 17 Minn. 372.

Oregon Short Line & Utah Northern Ry. Co. v. N. P. Co., 61 Fed. 158.

Oregon Short Line & Utah Northern Ry. Co. v. N. P. Co., 51 Fed. 465.

Little Rock & Missouri Riv. R. R. Co. v. St. Louis & Iron Mountain R. R. Co., 59 Fed. 400.

Atchison, Topeka & Santa Fe R. R. v. D. & N. O. R. R. Co., 110 U. S. 668.

United States v. Trans-Missouri Freight Ass'n., 7 C. C. A. 15.

Cook on Stock and Stockholder, Sec. 897.

The proposed guaranty is not an accommodation, promise or a loan of credit; but is an agreement to meet a legal obligation upon conditions, or to pay a debt, or satisfy a liability. The obligation is legal; because it is the consideration of securing a joint use of the lines of another road, its depots and terminals or the right to bill and route traffic over such line; in other words the right to make the traffic arrangement in question. The rule is well stated in section 775 in Cook on Stock holders.

"After a great deal of litigation the rule has become established that such a guaranty is valid; provided it is based upon a valuable consideration and the consideration is such as the guarantor has the right to receive or invest in."

Authorities.

In Zabriskie v. R. R. Co., 23 How. 390, the court upheld such a guaranty under the following circumstances: The defendant road had a right to construct its line to a given terminus; a part of the way another road had been constructed by another company with narrow gauge; the defendant company induced the other company to change its gauge and adopt the c of defendant, so that its cars and locomotives cou

moved over the track of the other company, and in consideration thereof it guaranteed the bonds of such other company issued for the purpose of raising money to widen the gauge.

In Green Bay & Minnesota R. R. Co. v. Steamboat Co., 107 U. S. 98, the railroad company was authorized to construct a road between given termini or to build and run steamboats to facilitate its business and operation. Instead of building boats it contracted with a steamboat company to transport merchandise for it. In consideration it guaranteed that the earnings of the steamboat company should equal a fixed sum annually.

In Railway Company v. Bridge Co., 131 U. S. 371, the statute of Illinois gave all railroads, having termini fixed by law, and other roads intersecting by continuous lines, power to consolidate stock and property with each other, or with companies out of the state; and in cases where it might become necessary, to construct viaducts and bridges for the use of such other companies. To induce the building of a bridge in such case, so that the lines might connect and consolidate, one of the companies guaranteed to the other which built the bridge, receipts from the use of the bridge to a fixed amount.

In Fort Worth City Co. v. Smith Bridge Co., 151 U. S. 299, the court approved the cases cited, and held that a company

"organized for the purchase and sale of lands in towns and villages had as an incident to its corporate power a right to incur liability in respect to providing facilities for transit to and from the lots and land, and that

a contract with a bridge company to pay a portion of the expenses of constructing the bridge, which gave access to the lots and lands was lawful and could be enforced."

In Harrison v. U. P. Co., 13 Fed. 522, the Arkansas Valley R. R. Co. had issued its bonds. The construction of its road was important to the business of the Kansas Pacific Company because it would receive business from such line and could exchange business with it. In order to promote the construction of such line bonds were issued by the Arkansas Valley Co., and the Kansas Pacific Company guaranteed the bonds. The Kansas Pacific Company held stock of the other company. The court held that its pecuniary interest in that company, growing out of its ownership of stock and traffic advantages, was sufficient to uphold the guaranty.

In Todd v. Kentucky Land Co., 57 Fed. 47, the defendant was authorized by its charter to acquire mineral and other lands, to purchase ore and timber and machinery for manufacturing and to open and develop mines, and build mills, factories, etc., and the charter also provided that it might, in furtherance of the powers granted, effect a permanent or temporary consolidation with any railroad or transportation company, chartered or to be chartered under the laws of Kentucky. Instead of consolidating with a railroad company this Land Company, in order to induce a railroad company to build a road which would furnish facilities such as it desired, guaranteed the bonds of the railroad company, upon which the money was raised to build the road.

The court sustained the guaranty.

This case went to the court of appeals and was affirmed in the case of Marbury v. Land Company, 10 C. C. A. 393.

In the case of Leavenworth v. The C. R. I. & P. Ry. Co., 134 U. S. 688, the court necessarily passed upon this question. The Rock Island Company endorsed the bonds of another railroad and afterwards acquired the property. The court says:

"The Rock Island Company paid a valuable consideration for this control and the other company received it. It endorsed the bonds of the Southwestern Company to the amount of five million dollars and agreed to protect it against a foreclosure of the mortgage given to secure the payment of these bonds during the period of construction of the road. The road could not have been built without this. The money for the construction of the road was derived from the sale of these bonds."

The court held that the guaranty was authorized.

In Kent v. Mining Co., 78 N. Y. 159, the court held that corporations have power to use all ordinary business means of attaining their object or promoting their prosperity, provided, they do not engage in business beyond the range of that for which they were organized. Unless especially restricted they have the use of all financial expedients. In this case the court says:

"When a corporation can lawfully buy property or get money on loans any known assurance may be exacted or given which does not fall within the prohibition, express or implied, of some statute."

The court cites Curtiss v. Leavitt, 15 N. Y. 66 and 67.

In Jones on Corporate Bonds and Mortgages, sections 1-230, there is a general statement of what corpora-

tions may do in this connection and it is said that in general they may give any kind of paper or security that an individual may give.

In Temple Street Ry. Co. v. Hellman, 37 Pac. 530, a Street Railway Company gave its note in consideration of the agreement of the owner of ball grounds to mo e to the vicinity of the railroad and give it ten per cent. of the gross receipts of the ball ground; it was held that the giving of the note by plaintiff was not ultra vires. The court said:

"The object was to increase the legitimate business of the Street Railway Company."

See also Vandall v. Dock Company, 40 Cal. 83.

It was also held in Smead v. Indianapolis etc. Ry. Co., 11 Indiana 104, that a railway company may agree to accept the drafts of another for fifteen thousand dollars in consideration that the latter change its gauge so that the cars of the former could be run over it, and make a traffic agreement with the former.

In the case of Ellerman v. Chicago Junction Ry., and the Union Stock Yards Co., 49 N. J. Eq. 217, (23 Atl. Rep. 287-297) the defendant Junction Company contracted for the title to a thousand acres of land, with an easement over three thousand acres more. There lands were subject to a mortgage to another corporation known as the Tolleston Company, for two million dollars; as a part of the consideration the Junction Company guaranteed the payment of the bonds issued under this mortgage. The court in discussing the authority of a corporation to make this guaranty, says:

"The amount of the bonds to be guaranteed r

sents so much of the consideration to be given by the Junction Company for all it is to receive under the contract. It could, under its charter, pay the amount by the use of its own bonds. * * * It could pay them to parties of second part as payment pro tanto of the consideration."

The court says if it could do this it could guaranty the bonds secured by this mortgage.

"By this means, instead of paying the money itself, which might have been required, it gained a credit for all the years during which these bonds run. Instead of pledging its own credit directly, as by issuing its own bonds, it lets the Tolleston Company remain the principal debtor while it assumes the formal position of surety, * * * It is just as lawful for a corporation to give a conditional contract to its creditor to pay him money as it is to give him a contract to pay him directly and without provision."

In the case of Rodgers L. & M. Works v. Railroad Association, 34 Fed. 278, it is held that a railroad corporation which has power by its charter to issue its own bonds, has authority to guaranty the bonds of another railroad company which it receives in payment of a debt due to it and which it afterwards sells.

In the case of R. R. Co. v. Howard, 7 Wall. 392, 411, the court had under consideration the liability of a railroad company as guarantor of certain municipal bonds that it had received to aid in its construction and in payment for subscriptions to the stock of the company. The court says:

"Power to make contracts and acquire and transfer property is conferred upon this corporation by the laws the state to the same extent as that enjoyed by in- duals; and the record shows that the instrument

of guaranty was executed and the bonds sold in the market as a means of raising money to construct a railroad and put it in operation. * * * Railroad companies may issue their own bonds to raise money to carry into effect the purposes for which they were created and it is difficult to see why they may not guarantee the payment of such bonds as they may have lawfully received from cities or counties and put them on the market as their own, as a means of reaching the same end."

In the case of Low v. The Central Pacific R. R. Co., 52 Cal. 58, the court had under consideration a lease made by the Cal. Pac. R. R. Co. of its railroad to the C. P. R. R. Co. Among the conditions in this lease was an agreement on the part of the lessee that it would pay to the lessor a specified sum of money semi-annually to keep the road in repair, pay the taxes, legal expenses, etc., and guaranty the payment of both principal and interest of the bonds of the lessor. There was no question under the law of California that the Central Pacific Company had the right to take the lease from the other company, or that it had a right to pay for the same. The court says:

"There is no sufficient reason deducible from the character of such a corporation, and the business in which it engages, why the corporation may not, for a valuable consideration, guaranty the payment of a debt, which it may directly contract to pay while the corporation may not, upon a sufficient consideration, make a conditional as well as an absolute promise to pay."

POINT TWO.

The agreement, so far as it relates to a transfer of one-half the full paid stock of the new or reorganized company, by the stockholders of such company, to the stockholders of appellee, is not forbidden by any law of the state. Appellee does not acquire the legal title to the stock, and by such transfer os stock it does not acquire the ownership or control, of the new or reorganized company.

Stockholders of a corporation are not the corporation itself. They may sue it or be sued by it, contract and deal with it as with individuals. The stockholders of defendant may purchase the stock of any other railroad company, and lawfully dispose of the same in the markets or by gift. Does the guaranty in question being in itself lawful, in any way affect the right of the stockholders of defendant to acquire, in their individual capacities, as they may, a part or the whole of the stock of the reorganized company? If the fact of such guaranty by the Great Northern Company has no relation to the rights of its stockholders, to deal as they will, does it make any difference that such stockholders have refused to approve or authorize the guaranty except upon condition that they acquire from the stockholders of the reorganized company one-half their holdings. The stockholders of the reorganized company must transfer one-half their holdings to the stockholders of the defendant company, or in trust for them, or else the traffic agreement and guaranty will fail.

Taking the broadest view for which appellant con-
's it may be said that the appellee advances the

consideration for the transfer of the stock. It comes to this, that in the contention of the appellant the contract is illegal so far as it involves the transfer of stock, not because the stockholders of defendant may not lawfully hold the stock if paid for by themselves, but because another company in which they hold stock advances the consideration or induces the transfer. It is not true that the ownership of a part or even a majority of the stock of another company by defendant's stockholders gives the control or a voice in the control of such other company to the defendant. The voting power is where the legal title is. Even if the ownership of such stock did give control, still the ownership is legal; there is no law prohibiting it. A man is not forbidden to own something merely because another advances the consideration for or induces such ownership. There being no incapacity to own a given thing, the advancing of the consideration cannot be illegal. It is true that the stockholders of one company, owning a majority of the stock of another company, can elect the officers of such other company, but those elected will hold their offices under the terms of the charter of their own company. The reorganized company will keep to its own organization; the defendant company will keep to its organization; neither of the companies can control their stockholders; neither of them will have any rights or discretion as to voting the stock held by its stockholders.

In Pullman Car Co. v. R. R. Co., 115 U. S. 587, an interpretation was given to the word control; the claim being made that the defendant company, by reason of

its ownership of stock of another company, had the control of such other company. This court says:

"We are of opinion that the railroad of the St. Louis Iron Mountain Company is not controlled by the present Missouri Pacific in such a way as to require that company to haul the Pullman cars over it, even if the contract is binding on the new company to the same extent it would be on the old one, were that company still in existence and standing in the place of the new. Confessedly, the Iron Mountain keeps its own corporate organization. It operates its own road. It has its own officers and makes its own bargains. The Missouri Pacific owns all or nearly all its stock; and in that way it can determine who shall constitute its board of directors. There the power of that company over the management stops. The board, when elected, has controlling authority, and for its doings is not necessarily answerable to the Missouri Pacific Company. The two roads are substantially owned by the same persons, and operated in the same interests; but the Iron Mountain Company is in no legal sense controlled by the Missouri Pacific."

If such an arrangement does constitute a consolidation of the companies or their stock, the right to so consolidate is within the express and necessarily implied powers granted by the legislative acts composing defendant's charter.

POINT THREE.

If the legal effect of the agreement, taken as an entirety, is to give to appellee the control of the new or reorganized company, it is authorized by the acts constituting its charter to execute the agreement and acquire such control.

1. It has such authority under the provisions of the act of March 1st, 1856, giving it power to become part owner of a railroad, or to adopt a railroad as its own, and to acquire the right to the sole or joint use of a railroad.

2. It has such authority under the provisions of the act of February 28th, 1865, giving it he right to consolidate its stock and property with the stock and property of another railroad company, either within or without the state.

The court below held:

"This agreement is more than a traffic contract. It is an agreement that the defendant shall have the traffic contract for itself and one-half the stock of the new corporation for its shareholders, in consideration of its guaranty of the payment of the bonds of that corporation. Does the charter give it power to buy this stock in this way? * * * The unrestricted right to consolidate with any other railroad corporation includes the power to buy and destroy the stock of that corporation and to pay for it by the issue to its shareholders of stock of the defendant. It includes this power because a consolidation may be easily effected in this way. * * * The whole is greater than and includes all its parts and in like manner the right to consolidate with a corporation includes a right purchase a part or all of its stock for the use of s holders of the purchasing company."

(Folio 50-51, R.)

Authorities.

In Marbury v. Kentucky Land Company, 10 C. C. A., 393, cited upon this point by the court, the charter of the Land Company gave it the power to enter into a temporary or permanent consolidation with a railroad company. This, as the court held, gave authority to the Land Company to risk its entire property in the business of railroads. Instead of consolidating with a railroad company owning a line constructed to reach its land and, therefore, useful to it, it induced the construction of such road by guaranteeing the bonds of such company, and also acquired an interest in the stock of the company. The right to execute such guaranty and acquire the stock was challenged. The court held that the right to consolidate the whole property carried with it the lesser right to acquire the stock and guaranty the bonds of the railroad company with which, had it seen fit, it might have consolidated. The court of appeals said:

"The learned circuit judge in the court below in a well reasoned opinion, supported by authority, held that what was done was a temporary consolidation, within the meaning of this charter. In attacking this view much stress is laid by counsel for the appellants on the fact that mention is made in the clause authorizing union, of articles or deeds of consolidation upon which it is vigorously contended that the only consolidation permitted is a union evidenced by formal articles, duly filed. It may be suggested in answer to this argument that while formal articles may be proper in permanent consolidation, they are not required * * * but why is it necessary to show that what was done in this case as in fact a complete consolidation within the statto make it lawful. It seems to us that the purchase e stock and guaranty can be supported on the that even if they did not constitute a consoli-

dation they were legitimate steps toward a consolidation. They involve the exercise of powers similar to, but less extensive than that of consolidation and may fairly be said to have been included in it as the part is included in the whole. It would be strange indeed if the Land Company had power, in order to encourage the construction of a railroad, to embark in the enterprise its total capital, with a railway company as a partner, and did not have power to accomplish the same purpose by investing only a portion of its capital."

In Branch v. Jessup, 106 U. S. 468, the authority of the South Georgia and Florida R. R. Co., to sell its road was questioned. It derived its authority from the Georgia and Florida R. R. Co. The court, after passing upon other points, upon reaching the question of the authority, sustained it as included within the power to consolidate, using the following language:

"But this company had, by its charter, express power to incorporate its stock with the stock of any other company This power had an enlarging effect upon the ordinary power to sell and dispose of property belong- company. * * * Where, as in this case, power is given to incorporate the capital stock with the capital stock of any other railroad company, a very large addition is made to the ordinary powers of any other railroad company. In this country the creation and exercise of such a power is well understood. It contemplates not only possible transfer of the railroad and its franchise to another company, but even the extinguishment of the corporation itself, and its absorption into a different organization. The greater power of alienating and extinguishing all its franchises, including its own being and existence, contains the lesser power of alienating its road and the franchises incident thereto and necessary to its operation. Its power of alie- ation and sale extends to a class of subjects to wh- it does not ordinarily apply.. In view of the large- er thus conferred upon the South Georgia and Company we cannot doubt that it had full

enter into the arrangement made with the Atlantic and Gulf Co., for the transfer of that portion of its line extending from Albany to Thomasville, including the franchise of constructing and using the same, and an incorporation of all its stock issued for the construction of such road with the stock of the latter company."

Referring to the power of the Albany & Gulf R. R. Co., the court used the following language:

"Since the consolidated company had the power to construct a railroad between Thomasville and Albany and had the general power to purchase and receive property of every kind, limited by the general object of its charter, what was to hinder it from purchasing from the South Georgia and Florida R. R. its road between said points and paying for it by the issuing of its own stock, an arrangement which, as we have seen, the Florida and Georgia Company had a perfect right to make."

In Hill v. Nisbett, 100 Ind., 341, the court held that under the law of that state corporations might purchase or consolidate with connecting and intersecting lines and that companies having the power to consolidate might, with a view of accomplishing such consolidation, purchase the stock of such other company. The court writes as follows:

"Section 3951, R. S. 1881, authorizes any railroad corporation organized under provisions of the general railroad law to acquire by purchase or contract the road, roadbed, real and personal property, rights and franchises of any other railroad corporation which may cross or intersect its line." "If," says the court, "it should appear to be reasonable or necessary to that end, no reason is conceived why it might not be accomplished by purchasing the stock instead of purchasing the corporate property directly. In short, the purchase of stock by one railroad corporation, in another will be upheld whenever there is necessary or reasonable means to the accomplishment of an end proposed which is within the scope of its statutory powers."

(See also Todd v. Kentucky Land Co., 57 Fed. 47.)

POINT FOUR.

1. The appellee having power under its charter and under the facts disclosed in the record, to execute the agreement, the question arises: Was such right taken away by laws of the state, Chap. 29, of General Laws of 1874, and Chap. 94, General Laws of 1881?

The act of March 9th, 1874, is entitled,

"An Act relating to railroad corporations and common cariers."

It provides that:

"No railroad corporation, or the lessees, purchasers, or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with or lease or purchase the works or franchises of, or in any way control, any other railroad corporation, owning or having under its control, a parallel or competing line, nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having under its control a parallel or competing line, and the question whether railways are parallel or competing lines shall, when demanded by the party complaining, be decided by a jury, as in other civil cases."

P. 75 of Record.

The Act of 1881 is entitled,

"An Act to authorize any railroad company to lease, purchase, or in any way become owner of, or to control, any other railroad corporation, or to consolidate therewith."

Section two, authorizes the leasing or purchasing [illegible] one company of the line of another and consolida[illegible] au- therewith.

It is provided, however, by section three tha[illegible]

way corporation shall consolidate with, lease, or purchase, or in any way become owner of, or control, any other railroad corporation, or any stock, franchises, rights, or property thereof which owns or controls a parallel or competing line.

(Page 73 and 74, of Record.)

2. If appellee's charter conferred upon it power to consolidate with a parallel or competing line, the acts of 1874 and 1881 cannot be sustained as acts regulating the exercise of the right. An act limited to prescribing the mode in which consolidation should be carried out, would be a regulating act, and might be valid. An act requiring the concurrence of a certain proportion of stockholders of each of the consolidating companies; or requiring the execution and recording in a specified public office, of a specified form of an instrument of consolidation, would be a regulating act. But acts wholly forbidding consolidations, which an existing charter authorizes to be made, are not in any sense legislative regulations of the right to consolidate. They are the precise contrary, and are mere naked acts of repeal, so far as they affect companies vested with such charter rights.

If, therefore, it be once admitted that the rights of consolidation, granted by the acts of 1856 and 1865, extend to parallel and competing lines, the general laws of 1874 and 1881, forbidding the consolidating of parallel and competing lines, cannot be sustained against is appellee, under the claim that those laws merely late appellee's rights to consolidate.

POINT FIVE.

An accepted act of incorporation of a private corporation is a contract between the state and the corporation.

Where the charter consists of a series of acts each act which confers new and valuable powers and franchises is a contract between the state and the corporation.

Any law of the state, which impairs or destroys any valuable franchise granted by such act, violates section ten, article one, of the constitution of the United States, which provides that no State shall pass any law impairing the obligations of a contract, and is, therefore, inoperative, unless a right to modify, impair, or destroy such franchise is expressly reserved.

A right to become owner of the railroad of another company, or to adopt it, or to become the owner of the stock of another company; or to consolidate with, or acquire the control of such company, is a valuable franchise and property right, which becomes vested immediately upon the acceptance of the acts by which the right is granted.

In Dartmouth College Case, 4th Wheaton, 518, this court says:

"A grant of a franchise is not, in point of principle, distinguishable from a grant of any other property. (Page 684.)

"I am unable to distinguish between the case of a grant of land or of a franchise to an existing corporation, and a like grant to a corporation brought into life for the only purpose of receiving the grant since it is in esse and the franchise and property becomes vested and executed in it, the grant is just as much an executed contract as if its existence had been established for a century." (Page 695.)

"Another objection is that no grants are within the constitutional prohibition except such as respect property, in the strict sense of the term; that is to say, beneficial interests in lands, tenements, and hereditaments, etc., which may be sold by the grantees for their

benefit and that the grants and the franchises, muniments and authorities, not valuable to the parties as property, are excluded from its purview. No authority has been cited that sustains this distinction, and no reason is perceived to justify its adoption. * * * * In respect to corporate franchises, very properly speaking legal estates are vested in the corporation itself as soon as it is in esse. They are not mere naked powers granted to the corporation, but powers coupled with an interest. * * * The franchises granted by the charter were vested in the trustees in their corporate character."

In Piqua Bank v. Knoop, 16th Howard, 280, this court says:

"Every valuable privilege given by the charter and which conduced to an acceptance of it, and an organization under it, is a contract which can not be changed by the legislature where the power to do so is not reserved in the charter."

In Monongahela Navigation Company v. U. S. 148 U. S. 312, this court says:

"The franchise is a vested right. The state has power to grant it. It may retake it as it may retake other property for public uses, upon the payment of just compensation. * * * When by the taking of the tangible property the owner is actually deprived of the franchise to collect tolls, just compensation requires payment, not merely for the tangible property itself, but also for the franchise of which it is deprived."

In Wilmington Company v. Reid, 13th Wallace 264, this court says:

"Nothing is better settled than that franchises of a private corporation, which, in its application to a railroad, is the privilege of running it, and taking fares, freight, etc., is property and of the most valuable kind, and it cannot be taken for public use, even, without compensation. It is true it is not the same sort of property as the rolling stock, roadbed and depot grounds,

but it is equally with them covered by the terms, the property of the company, and therfore, equally within the protection of the charter."

In Binghamton Bridge Company Case, 3 Wallace,51, this court says:

"We have supposed that if anything was settled by the unbroken course of decisions in the federal and state courts, it was that an act of incorporation was a contract between the state and the stockholders. All courts at this day are estopped from questioning the doctrine. The security of property rests upon it, and every successful enterprise is undertaken in the unshaken belief that it will never be forsaken."

In First Division of the St. Paul and Pacific R. R. Co. v. Parcher, 14 Minn. 224, the principal question was as to the validity of the organization of the First Division Company. The Minnesota and Pacific Railroad Company was created by an act of the legislature of the territory of Minnesota approved May 27th, 1857. The State, under authority given in its constitution, loaned its credit to this company in the form of state bonds to secure which a mortgage was executed of the property, land grant, powers, and franchises of the company. No railroad had been constructed. By foreclosure of this mortgage the land grant, powers, and franchises of the company passed to the state as a purchaser. The state, by act of March 10th, 1862, transferred to the persons therein named all the property and franchises of the Minnesota and Pacific Railroad Company, including the right to be a corporation under the corporate franchises of that company. Upon an organization by the persons named in this act agrees: St. Paul and Pacific Railroad Company, that

became vested with all the lands and franchises, including the corporate franchises of the Minnesota and Pacific Railroad Company.

The constitution of the state, adopted in 1858, prohibited the creation of a corporation by special act.

At the time no railroad had been completed ready for operation.

The St. Paul and Pecific Railroad Company, under an act of the state approved February 6th, 1864, issued its special or preferred stock on account of the construction of a portion of its line of railway. By this act the holders of such stock were authorized to use and exercise all the rights, privileges, franchises, powers, and interests under such corporate name as they might adopt, and in such name and under such organization to control and administer portions of the road, on account of which such stock was issued. The holders of such stock organized the First Division Company, and its organization was confirmed by special laws of 1866. It was contended that the organization of the First Division Company was unlawful; that the acts of 1864 and 1866, under which it was organized, were special laws and created a new corporation, and in violation of the constitution.

The court held:

"It is manifest that the execution and foreclosure of such mortgage upon a portion of the company's railroad or branches, would operate to authorize the organization of a distinct corporation to construct and operate the portion of the road or branch covered by the mortgage. The authority to bring into actual existence a distinct corporation by means of a mortgage and foreclosure was then given to the company by the act incorporating it. The legislature of the state, under the

constitution, could not, by any special act, create nor authorize the creation of a corporation. But the authority to bring into actual operation a separate corporation having been vested by the territorial legislature, whether the state legislature could, without infringing the constitution, empower the company to exercise that authority in a mode different from that contemplated by the original act is a different question. While the constitution prohibits the vesting of a substantial authority to create a new corporation, we do not think that it prohibits the legislature from regulating the exercise of an authority already vested, to bring into actual existence a separate corporate body; and this, we think is all that the state attempted to do by the act of February 6th, 1864."

In Mayor of Houston v. Houston City Ry. Co., 19 S. W. 127, the city council of the city of Houston in the year 1883 granted a right to the railway company to construct and operate its road through all the streets of the city for a term of thirty years. In 1890 the city attempted to annul this franchise, though it had reserved no right to do so, as to certain streets upon which, up to that time, the company had not constructed any road. The railroad company had built a road in some of the streets, but not in the one in question. The court held that the ordinance of 1890, which annulled or impaired the right granted to use the street in which the road had not been built, was void, saying:

"We also think that according to the current of authority, the grant, having been accepted and acted upon, became a vested right or perfected contract which could not be subsequently repealed or impaired by the common council of the city."

In Boston and Lowell Ry. v. Salem and Lowell Ry., 2 Gray 1, the state granted to the plaintiff the right to construct and maintain a road from Boston to Lowell,

giving an exclusive franchise for a period of thirty years. It was held that the state had no authority to grant a charter to defendant, or to permit it to construct a competing and parallel road between those cities until after the expiration of thirty years.

Village of Highland Park v. Detroit Plank Road Co., 55 N. W. Rep. 382.

Ames v. Lake Sup. & Mississippi, 21 Minn. 255.

New Orleans Water Works Co. v. River, 115 U. S. 47.

Tammany Water Works Co. v. New Orleans Water Works Co., 120 U. S. 64.

Pablo Sala v. City of New Orlenas, Sec. Woods, 188.

Citizens Ry. Co. v. City of Memphis, 53 Fed. 715.

POINT SIX.

It is contended by Appellant that the words "may amend" are not limited by the words "in any manner not destroying or impairing the vested rights of said corporation," and that the State has the right to adopt such changes or amendment as it deems expedient, and that the words "Vested Rights" do not refer to corporate charter rights and franchises, which became vested upon the acceptance of the acts of incorporation, but derivative property rights, acquired by the use of the corporate powers and franchises.

1. A charter contract not containing a reservation on the part of the state of a right to alter or amend cannot be impaired by subsequent legislation.

2. A right may be reserved by the state to alter, amend, or repeal a charter contract. In such case

vested rights may be impaired or annulled. Not vested rights in property or contract, acquired by user of corporate powers and franchises, but rights vested in the corporation by the terms of the charter contract, being part of the contract of incorporation. The distinction between the rights of property, acquired under an exercise of corporate powers and franchises, and which are protected under the fourteenth amendment of the constitution of the United States, and rights given by contract, and which are protected under Article one of Section ten of the constitution, is apparent.

In Tomlinson v. Jessup, 15 Wallace, 454, this court says:

"It is true that the charter of the company, when accepted by the corporators, constituted a contract between them and the state, and that the amendment, when accepted, formed a part of the contract from that date. * * * * The power reserved to the state by the law of 1841 authorized any change in the contract as it originally existed, or as subsequently modified, or its entire revocation, The original corporators or subsequent stockholders took their interest with knowledge of this power, and of the possibility of its exercise at any time in the discretion of the legislature. * * * It is a provision intended to preserve to the state control over its contract with the corporators, which, without that provision, would be irrepealable, and protected from any measures affecting its obligation. * * * The reservation affects the entire relation between the state and the corporators, and places under legislative control all rights, privileges, and immunities derived by its charter direct from the state. Rights acquired by third parties, and which have become vested under the charter, in the legitimate exercise of its powers, stand upon a different footing; but of such rights it is unnecessary to speak here. The state only asserts in the present case the power under the reservation to modify its own con-

tract with the corporators; it does not contend for a power to revoke the contracts of the corporation with other parties, or to impair any vested rights thereby acquired."

In Railway Company v. Maine, 96 U. S. 510, this court says:

"By the reservation in the law of 1831, which is to be considered as if embodied in that act, the state retained the power to alter it in all particulars constituting the grant to the new company, formed under it, of corporate rights, privileges and immunities. The existence of the corporation and its franchises and immunities derived directly from the state, were thus kept under its control. Rights and interests acquired by the company NOT CONSTITUTNIG A PART OF THE CONTRACT OF INCORPORATION, STAND UFON A DIFFERENT FOOTING."

Hamilton Gas Light and Coal Co. v. City of Hamilton, 146 U. S. 258.

Greenwood v. Freight Co., 105 U. S. 13.

Bridge Co. v. United States, 105 U. S. 470.

3. A charter contract may contain a limited reservation of a right to alter or impair powers, rights, and franchises granted by it. In such case it is the contract that may be altered or amended, and vested rights growing out of an acceptance of the contract may be impaired. In this case we have a reservation of a right to amend, "in any manner not destroying the vested rights of the corporation." The vested rights of the corporation were the rights, privileges, and franchises which it acquired on its acceptance of the acts constituting its charter. By such acceptance the corporation acquired a right to hold and convey property, real

or personal, necessary to carry into effect the object and purpose of the corporation; * * * The right to construct railroads, main and branch lines; * * the right to become part owner of, or to adopt as its own, the railroad of another company; * * * the right to acquire the sole or joint use of the railroad of another company; * * * the right to consolidate its stock, its railroad, property, effects, and franchises with the stock, property, effects, and franchises of any other railroad company, either within or without the state.

How can it be said that subscriptions would have been made and money paid thereon if the act of 1856 had not contained every right, power and franchise, which it, in express terms, grants?

But this is not all.

The act of March 1st, 1856, was accepted shortly after its adoption. Such acceptance was recognized in sections 1 and 2 of the act of February 28th, 1865, (P. 49-50, R.)

The corporation had been organized when this act was passed. It accepted this act as the bill alleges in paragraph 2, but it was not required to accept it. At the time this act was accepted its railroad had not been constructed. How can it be said that this act would have been accepted, and the necessary capital raised and invested in the construction of the road from St. Cloud to Lake Superior, if this act had not granted each of the new and valuable franchises contained in it?

If appellee had executed the proposed agreement, or consolidated its stock or proptrey and franchises with

the stock or property and franchises of a parallel and competing line, prior to the adoption of the act of 1874, it is not contended that under the right reserved to amend, the state could have lawfully annulled such contract of consolidation, or have deprived appellee of any right acquired under it. In such case it is conceded the right would have become vested, and thus could not have been impaired. It is claimed that only rights of property and other derivative rights, which have been acquired by user, under the acts constituting the charter, are vested rights within the meaning of the words as used in section 17 of the act of 1856; but this is not so. It is not user that gives the right or franchise. It is the franchise which authorizes the user. The distinction between rights of property, which are protected as vested rights, because they are property rights, and a contract right, and obligation, in the form of powers, privileges and franchises granted by an act of incorporation, seems very apparent.

4. Stated in another form appellant's contention is that if the words "not to impair or destroy the vested rights of the corporation" are given the meaning contended for by appellee, the word "amend" has no meaning, because if the word "amend" had not been used the state would have had a right to amend the act in such a way as not to impair vested rights. It is true that where there is no reservation of a right to alter, amend, or repeal, the state may alter, amend, or repeal a corporate contract, if by such alteration, amendment, or repeal none of the obligations of the contract are impaired. The right which the corporation has, under the

provisions of the charter, is that the state, as a party to the contract, shall observe and keep its obligations, and insure to the corporation every right and franchise which the contract grants.

"A state may, without impairment of the obligations of a contract, regulate or even limit the remedies for the enforcement of that contract, provided, that it does not take away all remedy or remedies therefor. In the case of a corporation, whose charter requires that service of process on the corporation shall be made only at its principal office, provide by subsequent legislation, that such process may be served on any officer, clerk or agent of the corporation."

Penniman's Case, 103 U. S. 714.

"The state may validate defective mortgages, (Gross v. Mortgage Co., 108 U. S. 477.) It may prescribe a scheme for the reorganization of an embarrassed corporation, and provide that creditors who have notice of and do not dissent from the scheme, shall be bound thereby. (Gilfillan v. Canal Co., 109 U. S. 401.) It may free shareholders of a cororation from individual liability for debts of the corporation to an amount greater than their shares; for such legislation does not impair the direct liability of the corporation."

Ochiltree v. I. R. C. Co., 21 Wall., 249.

A reservation of a right to amend without words of limitation, gives a right to amend the charter, in any manner the state may deem expedient. It is the contract that in such case is subject to amendment. Here we have words of limitation, "may amend in any manner not impairing or destroying the vested rights of the corporation."

Are not the negative words to stand as the controlling language?

How were the words understood by the corporators and parties who subscribed to the stock, paid their money, and organized under the charter?

In construing these words, we should look at the condition of the country, and the circumstances existing at the time the acts were passed. In 1856 the legislature of the territory of Minnesota "convened at St. Paul, more than three hundred miles from the nearest railroad, with an area of fertile but unoccupied land, stretching to the north and west, so vast and so distant from commercial centres that there was no hope of its occupation or cultivation, until the country was settled, and the needs of its occupants supplied through railroad transportation." Under such circumstances, the legislature was willing to grant large and valuable franchises and privileges, to induce the investment of capital for the construction of railroads. It offered to appellee all the rights, franchises and privileges contained in the act of March 1st, 1856. It intended that all such rights should be secure aginst amendment in such a way as to impair or destroy them by subsequent legislation.

Many questions that have since been solved were, at that time, not thought of; limitations that have since been imposed upon corporations were not considered. Nine years passed, but no railroad had been built. Then the state amended the original charter contract, and offered the amendment to the corporation, thus giving to it new and very valuable privileges and franchise. The court had, prior to that time, decided that every valuable privilege given by a charter, and which induced to its acceptance, was a contract which could not be

changed by the legislature unless there was a reserved power to do so. The conclusion, as the court below held:

"is irresistible that they meant that they would never so amend that charter as to impair or destroy any franchise or rights of the corporation which the courts had declared vested as soon as the corporate act was accepted."

5. The words of limitation are controlling. If necessary to preserve the limitation the word "amend" must be disregarded. If not controlling they are without meaning.

In Smith v. Santa Fe Ry Co., 64 Fed. 272, defendants charter was granted in 1859, giving to the stockholdres one vote for each share of stock. In 1855, before this charter was granted, a general law was enacted which provided:

"That the charter of every corporation hereafter granted shall be subject to alteration, suspension, or repeal, by any succeeding legislature, provided that such suspension, alteration or repeal, shall, in no wise, conflict with any right vested in such corporation by itscharter."

In 1876, and in 1881, a new law was passed providing a different method of voting. The validity of such acts was challenged by the plaintiff. The court held:

"That assuming the law of 1855 authorizing amendment to charter to be in force as though written in the defendant's charter, the proviso in the act extracted the meat and left only the shell. It seems to me, says the court, it would puzzle the most astute legal mind in the light of the adjudicated cases touching vested charter rights, to find anything of substance herein, reserved for legislative action. Certain it is that the right to vote capital stock on the non-cumulative plan, has been

repeatedly decided to be a vested property right, and that is sufficient to this case, and brings it under the proviso of this act. It must, therefore, be conceded that this corporation may stand on its charter rights."

Where shall the line be drawn, showing the distinction between vested rights which may not be impaired, and rights which may be impaired or destroyed? The rights and obligations given by a contract vests immediately upon its execution. The obligation of a contract is the legal duty to observe it.

If user is the test, then to what extent must there be user? Appellee accepted the acts constituting its charter, and under them its railroad was constructed from St. Cloud to Lake Superior. It has issued and sold at par twenty-five millions of stock. (Bill, par. 7, page 5, Record.)

Could the state have taken away appellee's right to construct its railroad? Having constructed its railroad, could the state have taken away its right to equip it? This could have been done only by amendment or repeal, and no right was reserved to repeal, and no right to amend in any manner IMPAIRING OR DESTROYING any vested right. The right to do the acts mentioned vested upon the acceptance of the charter or they never have become vested.

6. But the word "amend" may be preserved and given force, although the right to amend is limited, as expressed in the section under consideration. The legislature might have made the grant without reserving any right. It could have reserved the full right of amendment or repeal. It adopted a third course. It

reserved a right to amend, but not so as to take away or impair any right given by contract to be amended. What is it that the legislature may amend? It is the contract between the state and the corporation. How may it amend this contract? The answer is, in any and all respects not in any way destroying or impairing any right given by the terms of the contract to the corporation. In a charter where there is no reservation of right to amend, no amendment can be made in any matter affecting the nature of the enterprise or making an increase of liability or duty without the consent of all the stockholders. The word "amend" then has force as a part of the contract under which the state may offer additional privileges, in its interests, that can be accepted by the corporation through the vote of a mere majority of its stockholders, and that cannot be rejected by the dissent of a single share. It has been held that where there is no reserved right changes like the following cannot be made without the consent of every stockholder:

An exchange of assets on dissolution for stock of another company. Frothingham v. Barney, 6 Hun. 366.

In case of consolidating the corporation with another to form a new corporation. (Blackford v. Ross, 37 How. N. Y. 113); (Clearwater v. Meredith,1 Wall. 40.)

In case of a railroad company departing from the route marked out in its charter. (Ry. Co. v. Pottle, 23 Barb. 23.)

Or by extending the road and increasing the capital stock. (Ry. Co. v. Laffon, 18 Barb. 315.)

Where, however, the legislature has the power to amend the charter of corporations, an alteration may

be accepted by a mere majority of the stockholders and such acceptance is binding on those who do not assent.

As where after such reservation an amendment is adopted providing for new and additional enterprises. (White v. R. R. Co., 14 Barb. 561.)

Or reducing the capital stock. (Joslyn v. Steam Ship Co., 12 Abbott, N. S. 334.)

So where a plank road company is empowered to construct a branch road. (R. R. Co. v. Thatcher, 11 N. Y. 100.)

So where the charter is so amended as to change the name of the corporation; to increase its capital stock, and to authorize an extension of its road. (R. R. Co. v. Dudley, 14 N. Y. 336.)

In Fry v. R. R. Co., 2 Metcalf, Ken. 314, an action was brought by the railroad company against the stockholders to compel the payment of a balance on subscription for stock.

After the line of the road had been located it was changed and placed on a different route. This alteration was relied on as a defense. As to this point the court held that the alteration was within the terms of the original act of incorporation, thus overruling the contention of the defendant.

Defendant claimed as a further defense that a change had been made in the nature of the enterprise by an amendment of the charter. Upon this point the court say:

"In March, 1854, an act was passed by the legislature entitled, 'an act to amend the charter of the Lexington and Big Sandy Railroad Company.' Some provisions of this act are calculated to produce a radical change in the charter. Of the latter description are

those which authorize a consolidation with other roads, either within or out of, the state, and those which authorize the company to subscribe, in their corporate name, for stock of any other railroad company. * * * Each shareholder has a right to insist upon the prosecution of particular objects of the charter. Such alterations as are necessary to carry into effect its main design may be made without its consent, but an alteration which materially and fundamentally changes the responsibility and duties of the company, or which superadds an entire and new enterprise, may be resisted by the stockholders unless such alterations are provided for in the charter itself, or in the general laws of the state as in force at the time its acts of incorporation were passed. The charter of this road contains no provision authorizing amendments to be made, nor was there any general law in force at the time it was granted by which they were authorized. The subscribers, therefore who do not assent to the amendment, have the right, if they think proper, to exercise it to prevent the company from proceeding to act under the amended charter, and to compel it to confine its operations solely to the promotion of the object designed to be accomplished by the original charter. Being members of the corporation they are entitled to all the rights and privileges conferred by the charter of which they cannot be deprived by the act of the company in accepting an amendment to which they are opposed, and which produces a material change in their rights and in the duties and liabilities of the company."

In Clear Water v. Meredith, 1 Wall, 25, the question involved was as to the effect of an amendment authorizing a consolidation of what was known as the Short Line Railway. The court say:

"The power of the legislature to confer such authority cannot be questioned, and without the authority the railroad company could not merge and consolidate their interests, but in conferring the authority the legislature never intended to compel a dissenting stockholder to transfer his interest because a majority of the stockholders consented to some consolidation.

Even if the legislature had manifested an obvious purpose to do so, the act would have been illegal for it would have impaired the obligations of a contract. There was no reservation of power in the act under which the Short Line Company was organized, which gave authority to make material changes in the purposes for which the corporation was created, and without such a reservation in no event could such a dissenting stockholder be bound."

In Dufree v. O. C. R. Co., 5 Allen 230, the charter of the defendant company authorized a construction of its line to a given terminus. Afterwards by an amendment authority was given to continue the road from such terminus to Rhode Island state line. A dissenting stockholder brought action to restrain the construction of the line so extended.

The charter was adopted subject to a general law of the state, giving the legislature the right to alter, amend or repeal.

The court held that by virtue of this right a majority of the stockholders could accept the amendment; that the complainant acquired his stock under the charter, which, as a contract, gave the right to the majority of the stockholders to accept such an amendment.

The court say:

"The stockholders cannot say that they became a member of the corporation on the faith of an agreement made by the legislature with the corporation, that the original act of incorporation could undergo no change except with their assent. *Such a position might be asserted with plausibility if there was an absence of a clause in the original act providing for an alteration of its terms.*"

In Plank Road Company v. Thatcher, 11 N. Y. 102. the court say:

"Speaking of a change in corporate enterprises the case before us is distinguishable from the cases relied on by defendant in the controlling feature, that in these cases the legislature had not reserved the right to alter the charter of the company."

7. A right to amend does not involve a right to repeal. To amend means to improve, to add to. The acts of 1874 and 1881 are not, therefore, amendments of the acts constituting charter of appellee. If operative against appellee they take away powers and rights once vested, and to that extent they repeal appellees charter.

POINT SEVEN.

The right of consolidation of stock and property is clearly granted to appellee by the act of February 28th, 1865. This right is not limited to the line from Minneapolis via St. Cloud to Lake Superior, but extends to all branch lines which appellee is authorized to construct. This act and the act of March 1st, 1856, are not to be treated as one act. It grants new franchises and powers; and, upon its acceptance, became a new and independent contract as respects all such new franchises and powers.

1. It is true that by its title the act is an amendment. It, however, re-enacts Section 1 of the act of 1856, and this, in terms, grants the franchise to be a corporation. It amends Sections 2, 10 and 12 of the act of 1856. (See Secs. 2, 3, 4 and 5.) (P. 50-51, R.)

NEW POWERS AND FRANCHISES.

By Section 5 new powers are given as to increasing or diminishing the number of directors.

By Section 6 authority is given directors to open books and receive subscriptions for stock pertaining solely to any one or more of its main or branch lines, or to any portion of either; and for the election of a sub-board of directors and for the regulation by said sub-board of that part of the main or branch line on account of which stock shall have been subscribed for the purposes of its construction. Such sub-board is authorized to designate the name by and under which such branch line, or portion of line, shall be operated, and such branch, or portion, is given all the rights, powers, privileges and franchises granted by the charter.

By Section 7 authority is given to accept from another railway company, the beneficiary of a land grant, all its right and interest in such grant, in case it was given to aid in the construction of any railroad running in the same general direction which appellee is authorized to construct.

By Section 10, special or preferred stock may be issued and an agreement made as to paying dividends upon such stock out of the net earnings.

By Section 11, authority is given to mortgage the road, or any portion of it, and its franchises. Authority is also given for the holding of meetings of directors or stockholders within or without the state, in the City of London or any foreign country.

By Sections 8, 9 and 12, authority is given to consolidate with other lines.

2. Nine years had passed since the adoption of the act of 1856 and its acceptance by appellee. No part of the line of road had been constructed. The State desirous of promoting the construction of the line, tendered by the act of Feb. 28, 1865, a grant of new and additional franchises. The act was accepted, as admitted by the bill (Par. 2) and, upon its acceptance, became a new and independent contract between the State and appellee. There being no reservation of any right to alter or modify the terms of this contract the laws of 1874 and 1881 are inoperative as respects the franchises granted by it.

The case of New Jersey v. Yard, 95 U. S., 104, is decisive upon this point.

In that case:

a. The Morris and Essex Railway Company was created by an act passed January 29th, 1835. The 20th section of this act contained a reservation of a right to alter, amend or repeal.

b. A supplement to the charter, passed March 2d, 1836, gave power to build *branch roads and repealed the 20th section of the original act;* but reserved a right to alter, or amend, not only the supplemental but the original act.

c. On February 14th, 1846, a general law relating to corporations was approved, which contained a provision that the charter of every corporation which should threafter be granted should be subject to alteration and repeal.

d. The original act provided that as soon as the net proceeds of the railroad amounted to seven per cent

on its cost, the corporation should pay a tax of one half of one per cent on the cost of its road annually, thereafter, and that no other tax should be imposed.

e. Another supplement was approved on the 23d day of March, 1865. This act contained provisions in effect amending the original act, and it authorized the construction of another branch road. The third section of this act contained a new provision upon the subject of taxation. It provided that the tax of one half of one per cent, to be paid under the original act, when the net earnings of the company amounted to seven per cent upon its cost, should be paid at the expiration of one year from the time when the company should open its road to Phillipsburgh, and annually thereafter, and that such payment should be in lieu of all other taxation. This act was to become operative upon the written acceptance by the railroad company. It was accepted; there was no reservation of a right to alter, amend or repeal.

f. After the acceptance of this act, and in April, 1873, an act was passed imposing a different method of taxation. The single question in the case was whether the act of March 23, 1865, and its acceptance by the railroad company, constituted a contract which could not be impaired by the act of 1873.

That case and the one at bar are alike in all material points.

1. There is no provision in the constitutions of the states of New Jersey and Minnesota reserving a right to alter, amend or repeal.

2. In that case there was a reservation in the original act of a right to alter, amend or repeal; in this there is a reservation of a right to amend so as not to impair vested rights. In that case a supplemental act was passed authorizing the construction of branch lines and conferring new and valuable franchises, which act contained no reservation of a right to amend or repeal; in this case a supplemental act was passed giving new and additional franchises, with no reservation of a right to repeal.

This court say:

"In the case now under consideration, it is conceded on all hands that the act of 1865 was a contract for a tax of one-half of one per cent per annum on the cost of the Morris and Essex Railroad, and no more. But counsel for defendant says the contract was repealable; that the legislature of its own volition could impose other and more burdensome taxes, at its discretion; that it was a contract so long as the legislature of New Jersey was satisfied with it, and no longer. It is conceded also, that this construction of it cannot be sustained, unless we are bound to import into it either the reservation clause of the act of 1836 or what is called the interpretation act of 1846. We have already shown how little reason there is for doing this on general principles of construction. We think it still clearer that it cannot be done, because it is inconsistent with the legislative intent in passing the act of 1865.

"The precise point held (in cases cited) is that a city charter being declared to be a public act supplements and amendments to it are also to be treated as public acts; but this falls far short of establishing the principle that a reservation in the charter of a private corporation of a right to repeal or amend it shall extend to EVERY SUBSEQUENT AMENDMENT OF THE CHARTER. It is not easy to see why such a provision should be extended beyond the terms in which it is expressed; and all the force which properly belongs to it is given when the exemption from the constitu-

tional provision against impairing the obligation of contracts is extended as far as the language of the exemption justifies, and it should be extended no further by implication. The language in the statute we are construing covers the supplement of 1836 and the original act, and nothing more,—namely, "the right to alter or amend this supplement, or the act to which this is a supplement,"—leaving future supplements to make the same reservation if the legislature so intends."

There was a written acceptance by the Morris and Essex Railway Company of the act of 1865. In the case at bar there was an acceptance, not in writing, but but by going on under the act and organizing sub-companies and constructing railroads. (Par. 2-3-4, Bill. P. 2, R.)

Upon this point the court says:

"The legislature was not willing to rest this contract in the usual statutory form alone, depending for its validity as a contract upon some action of the corporation under it to bind it to its terms; but they required of the company a formal written acceptance within sixty days, or else it became wholly inoperative."

POINT EIGHT.

It is contended by appellant that under the provisions of Sec. 5 of the act of 1856, no right vested until part of the road was constructed.

1. Section 5 of the act of 1856, (P. 2, R.) provides—

"That said company is hereby authorized and empowered to construct its said railroad and its branches in sections as fast as they may obtain the means for doing so, and the franchise of the portions so completed

and put in operation shall vest in said company the same as though the whole were completed."

This section is to be read in connection with the provisions of the first clause of section 12, which requires that the corporation shall locate at least thirty miles between given points, and commence work within two years, and complete at least one track within seven years. This provision as to time, while not so expressly declared, doubtless imposed a condition for breach of which the state might have declared a forfeiture and resumed the franchise granted.

The purpose of section 5 was to protect the company against any such forfeiture to the extent that it might have actually completed its road before any attempt at forfeiture.

As fast as the road was constructed all rights were secure against any attempt at forfeiture, and all the franchises of the company would be preserved and would vest in the company as to such portions or sections as it had built, the same as though it had constructed its entire line.

Wherever appellee is authorized to locate and construct a railroad, it is authorized to lease and adopt a railroad, and thus save the cost of construction.

POINT NINE.

Appellee being authorized under the acts constituting its charter to execute the agreement, such right and franchise cannot be impaired or destroyed by the state, under the exercise of police power, and the acts of 1874 and 1881 cannot be sustained upon the ground that they are police regulations. Neither is the agreement contrary to public policy.

1. Police Power.

"Police regulations must have some reference to the comfort, safety, or welfare of society. They must not be in conflict with any of the provisions of the charter and they must not, under pretense of regulation, take from corporations any of the essential rights and privileges which the charter confers; in short they must be police regulations in fact and not amendments of the charter or curtailment of the corporate franchise."

Cooley on Constituional Limitations, p 710.

In the case of New Orlenas Gas Co. v. Louisiana Light Co., 115 U. S. 650, the court had under consideration the validity of an exclusive franchise for supplying the city of New Orleans and its inhabitants with gas. It was claimed that such franchise had been modified by subsequent constitution of the state adopted in 1879, abolishing monopolies.

This court says:

"If the state can, by contract, restrict the exercise of her power to construct and maintain highways, bridges and ferries, by granting to a particular corporation the exclusive right to construct and operate a railroad within certain lines, and between given points, or to maintain a bridge or operate a ferry over one of her navigable streams within designated limits; if she may

restrict the exercise of the power of taxation, by granting exemption from taxation to particular individuals and corporations; it is difficult to perceive upon what ground we can deny her authority—when not forbidden by her own organic law—in consideration of money to be expended and important services to be rendered for the promotion of the public comfort, the public health or the public safety, to grant a franchise, to be exercised exclusively by those who thus do for the public what the state might undertake to perform either herself or by subordinate municipal agencies. (page 665.)

"Railroad Co. v. McClure, 10 Wall. 511; Ohio Life Ins. & T. Co. v. Debolt, 16 How. 416, 429; Sedgwick's Stat. & Const. Law, 637. And the obligations of her contracts is as fully protected by that instrument against impairment by legislation as are contracts between individuals exclusively. New Jersey v. Wilson, 7 Cranch. 164; Providence Bank v. Billings, 4 Pet. 514; Green v. Biddle, 8 Wheat. 1; Woodruff v. Trapnall, 10 How. 190; Wolf v. New Orleans, 103 U. S. 358." (Page 672-73.)

Louisville Gas. Co. v. Citizen's Gas Co., 115 U. S.683.

New Orleans Water Works Co. v. Rivers, 115 U. S. 674.

Tammany Water Works Co. v. New Orleans Water Works Co., 120 U. S. 64.

McRoberts v. Washburn, 10 Minn. 23.

Binghampton Bridge case, 3 Wall. 51.

Boston & Lowell R. R. v. Salem & Lowell R. R. Co., 2 Gray. 1.

In Washington Bridge Co. v. State, 18 Conn. 53, the legislature of Connecticut in 1802, chartered the Washington Bridge Company and authorized it to construct a bridge across the Housatonic river, with a draw thirty-two feet wide, for the passage of vessels,

but reserved no power to repeal or amend the charter. Subsequently the legislature passed an act requiring the Bridge Company to build a draw fifty feet wide. The court held that the act was inoperative as impairing the obligation of a contract.

Citizens' Ry. Co. v. City of Memphis, 53 Fed. 715.

People v. Jackson and Michigan Plank Road, 9 Mich. 306.

CORRECT RULE OF CONSTRUCTION.

In the Binghampton Bridge Case, 3 Wall. 51, this court say:

"A great deal of the argument at the bar was devoted to the consideration of the proper rule of construction to be adopted in the interpretation of legislative contracts. In this there is no difficulty. All contracts are to be construed to accomplish the intention of the parties, and in determining their different provisions, a liberal and fair construction will be given to the words, either singly or in connection with the subject matter. It is not due the duty of a court, by legal subtlety, to overthrow a contract, but rather to uphold it and give it effect; and no strained or artificial rule of construction is to be applied to any part of it. If there is no ambiguity and the meaning of the parties can be clearly ascertained, effect is to be given to the instrument used whether it is a legislative grant, or not.

"It is evident that what was then considered a great scheme of internal improvement was in the mind of the legislature. Such a scheme was, at that early period in the history of the state, not of easy solution. It required more energy and foresight and involved greater hazard in the commencement of this century, to build turnpike roads through an unbroken wilderness, and erect bridges over dangerous streams than it would now to checker the surface of a state with railways. These considerations are great helps in arriving at a correct knowledge of the intention of the legislature, and in

giving a proper construction to the grants that were made. For it should never be lost sight of that the main canon of interpretation of a contract, is to ascertain what the parties themselves meant and understood.

"Competing bridges or ferries within the prescribed limits of two miles above and below were forbidden. These were important privileges and justified by the peculiar circumstances of the country; and it is easy to see that without them prudent men would not have engaged in the enterprise."

The state may, through its legislature, fix a tariff of maximum rates, subject to judicial review. It may, however, grant to a railroad company the exclusive right to fix rates, and thus cut itself off from any right to legislate upon the subject.

In Reagan v. Farmers' Loan and Trust Co., 154 U. S. 392, this court say:

"The charter which created it is a contract whose obligations neither party can repudiate without the consent of the other. All that is within the scope of this contract need not be determined. Obviously, one obligation assumed by the corporation was to construct and operate a railroad between the termini named; and on the other hand, one obligation assumed by the state was that it would not prevent the company from so constructing and operating the road. If the charter had in terms granted to the corporation power to charge and collect a definite sum per mile for the transportation of persons or of property, it would not be doubted that that express stipulation formed a part of the obligation of the state which it could not repudiate."

2. The agreement is not contrary to public policy.

The acts constituting the charter of appellee are to be construed with reference to conditions existing when they were adopted. Then there was no law forbidding

the consolidation of parallel or competing lines. The public needed railroads. Many special charters were granted, containing valuable franchises, and in them franchises and powers are recognized as "vested rights." In many of such acts authority is given for the consolidation of parallel and competing lines.

CONTEMPORANEOUS LEGISLATION.

By section 12 of the act of February 28th, 1865, franchises are recognized as vested rights. It provides:

"But the said Minneapolis and St. Cloud Railroad Company shall remain vested with all its other rights, powers, privileges and franchises."

By act approved March 6th, 1869, (P. 57, R.) it is provided:

"All the rights, franchises, privileges and immunities heretofore granted to said company upon the main line, or any branch thereof, shall apply to said branch road."

By act approved March 11th, 1879, (P. 58, R.) it is provided:

"All the rights, privileges, franchises and immunities heretofore granted to the Minneapolis and St. Cloud Railroad Company are continued and extended, and if the said branch road shall be completed and equipped, then, and in such case, the said rights, privileges, franchises and immunities SHALL CONTINUE AND BE PERPETUAL, as in and by the original act of incorporation of said railway company and in the acts amendatory thereof provided."

Thus the legislature regarded the rights and franchises as perpetual—that is, not subject to be impaired or destroyed.

By section 2, P. 247, Laws of 1862, "rights, privileges, franchises and property are granted to and vested in R. R. Nelson and others."

By laws of the state of Minnesota, (page 147, Laws of 1863) the St. Paul and Pacific Railroad Company was authorized to construct a branch road from some point near the town of St. Cloud to Lake Superior. It had authority to construct a road from Stillwater, by way of St. Paul to Breckenridge, and from Minneapolis, by way of St. Cloud, to the Canadian boundary line.

Section 4 of the act provides:

"The St. Paul and Pacific Railroad Company shall have power to consolidate the whole, or any portion, of its capital stock, with the capital stock, or any portion thereof, with the road, or branch road, of any other railroad corporation, or company, having the same general direction or location."

On March 1st, 1856, the date of the adoption of the original act of incorporation, the legislature of the territory passed a special law incorporating the Lake Superior and Central Minnesota Railroad Company, giving it authority, "to construct a line from the mouth of the St. Louis river (now Duluth) by way of Mille Lacs, to St. Cloud; thence to the western bounds of the territory (Note: the territory then included the present states of North and South Dakota), and also a branch, by way of St. Peter, to the Minnesota river." Under this act a line of road could have been constructed parallel with and contiguous to the line of appellee from Lake Superior to St. Cloud, and from the Minnesota river to the western boundary of the territory. This company was given the power "to consolidate its capital stock with the road of any other company upon such

terms and conditions as the two companies may agree upon." (Page 280, Sec. 7-22, Laws of 1856.)

On the same day the territorial legislature adopted an act to incorporate the Lake Superior and Northern Pacific Railroad Company. Section seven of said act provides:

"Said company shall commence its railroad at some convenient point near the Bay of Superior in the territory of Minnesota; running from thence on such line as it may fix to Mille Lacs, or Little Falls, and thence to the western bounds of the territory, with power to build a branch to St. Cloud, or to any other point necessary to connect with any railroad running northwardly from St. Paul."

By section 22 it is provided:

"The aforesaid company shall have power to consolidate the capital stock of said company with the Lake Superior and Minnesota Central Railroad Company (the one last above referred to) upon such terms and conditions as the two companies may agree upon."

(Page 301, Sec. 7-22, Laws of 1856.)

GENERAL RAILROAD LAWS.

By Section 21, of Chap. 70, Laws of 1858, it is provided:

"When the line of road of any railroad company in this state or any portion of such lines, have been, or are being so constructed, as to admit the passage of burden or passenger cars over any two or more of such roads, continuously, without break or interruption, such companies may consolidate themselves into a single corporation."

This section applies when a railroad line or any portion of a line may be connected with another to form a continuous line. Then, there may be a consolidation of

the two companies, not of that portion of the road,which forms a continuous line, but of all lines of both companies, even though some of such lines run in a different direction from the one forming the continuous line, and are parallel and competing lines.

To illustrate:

The line of the road of appellee and the Northern Pacific line connect at Saint Cloud, forming a continuous line from Saint Paul by way of the line of appellee to Saint Cloud,and from there to Brainerd and other points by the line of the Northern Pacific Company. Thus, cars may pass over the two lines, without break or interruption; such being the case the companies may consolidate themselves into a single company.

Consolidation of parallel and competing lines was, by this act, made lawful, in all cases where portions of the lines were so located as to be connected and form a continuous line between given termini.

Appellant cites, as bearing upon the construction to be given to this statute, the case of State v. Vanderbilt, 37 Ohio, 590. The case is not in point; the two roads which claimed the right to consolidate were located, with respect to each other, like the sides of the letter "V." The Cleveland, Cincinnati, Columbus, and Indianapolis Company, owned a line from Cleveland to Springfield, and leased the line from Springfield, via Dayton, to Cincinnati, forming a continuous line from Cleveland to Cincinnati. The Hamilton & Dayton Company owned a continuous line from Cincinnati to Dayton, and a leased line from Dayton to Toledo, forming a through line from Cincinnati to Toledo. Thus the lines started from a common point, Cincinnati, and di-

verged, one to Lake Erie, at Cleveland, and the other at Toledo. There was a short line connecting the two roads from Dayton to Hamilton. Neither company owned this line; each had a running right over it, and it was not embraced in the plan of consolidation. The court held that the two roads did not connect so as to form a continuous line, and that under the consolidation there would not be one continuous line, but one company with two continuous lines from Cincinnati to Lake Erie, parallel with each other. Some members of the court held that the leasehold interest of the two lines could not be consolidated, because of the provision of the statute on the subject.

ACT RELATING TO THE NORTHERN PACIFIC COMPANY.

Chap. 65, Special Laws of 1870, under which the Northern Pacific Railroad Company acquired the right to construct its road in the state, it is provided:

"Whenever the Northern Pacific Railroad Company shall connect with, or cross the routes or lines of any other railroad, within the limits of this state, and a portion of the routes and lines of said railroad shall be parallel or coterminous, such portions may, by agreement of the companies interested therein, be blended in one track or a double or side track, and may be owned and used in common for such length of time and upon such terms as may be agreed upon between said companies and said companies shall thereby be held to have complied with the requirements of their charters in that particular, the same as if different tracks had been built by each."

The Northern Pacific Company has constructed and the new or reorganized company will own a line of railroad in this state parallel as it is claimed, with the line of appellee. If the leasehold interest of appellee is

not such as to make it practically the owner of the line of the Manitoba Company in this state, then it is not acquiring the stock of other parallel or competing lines, and there is no legal objection to the execution of the agreement.

Again, this act provides:

"That by agreement of the companies interested therein, portions of a route or line may be owned or blended in common."

The Northern Pacific line connects with and crosses the line of appellee in Minneapolis, at St. Cloud, at Fergus Falls, at Moorhead, and other points in the state of Minnesota. The lines are parallel from St. Paul to Moorhead. It follows that by agreement the lines between these points, and at all places where they are parallel, or coterminous, may be blended as one track, or as double tracks, and may be used and owned in common, for such length of time, and upon such terms as may be agreed upon by the companies. Under this act it is lawful for appellee to secure a joint ownership of the tracks of the new or reorganized company, or to become the owner of the capital stock of such company as one of the terms of the agreement.

3. There was no law prohibiting the consolidation of parallel and competing lines until 1874. The act of 1881 was adopted to authorize the leasing and controlling of one company by another and to authorize the consolidation of companies in all cases where their lines were not parallel or competing. These acts, so far as they prohibit the consolidation of parallel or competing lines, or the control by one company of a parallel or competing line of another, were adopted during the

period of what is known as GRANGER LEGISLATION, and before it had become the settled policy of the law that through legislation and in the courts the policy of railroads might be controlled and rates regulated.

It was then thought that competition was necessary and promotive of public welfare. Experience has shown that investors have been protected and the public better served by a union of parallel and competing lines of railway, either through consolidation or in some way by which a common control has been secured. This has been done in the Eastern, Middle and Southern states. Many parallel and competing lines operated at a large expense, by reason of the necessity of maintaining separate organizations, have been placed under a common control and thus expenses have been reduced, and the public has had better service and at less cost. Competition, as a means of fixing rates and protecting the public against unreasonable charges, is practically obsolete. Every contract between railroad companies must be filed with the Interstate Commission or State Commission; tariffs are filed, rates are published and they cannot be changed except upon notice to the commission. Discrimination in favor of individuals and places is forbidden, and the long and short haul clause enforced. Rates must be reasonable. Commissions and legislatures may declare what is reasonable, subject to judicial review. If two roads in the state consolidate, rates existing before consolidation must remain in force until notice is given of change and the right to change is open to challenge and restraint. Should the proposed agreement be carried out, appellee will secure a right to bill and route its cars to Tacoma,

Portland, Winnipeg, and to numerous points where there are larger lumber and mining interests. It is necessary to the interests of appellee that it should reach these points and industries. To do this, if it may not enter into the proposed agreement, it must, at a cost of millions of dollars, construct lines of railway, parallel with the lines of the Northern Pacific Company and near them, by reason of the topography of the country. It must maintain separate terminals at points where the roads unite, or pay a very large rental for the joint use of terminals of another company.

In the case of Chicago, Rock Island and Pacific Company v. Union Pacific Company, 47 Fed. 15, the court says:

"If this contract had not been made, or should it not now be enforced, two or three millions at least of additional capital would be put into railroad and bridge construction, and such expenditure of money places an additional burden upon the public. Every unnecessary mile of railroad track, or bridge, that is built, adds to the cost of transportation; and surely the public is interested in seeing that that cost be as light as possible. A very serious economic and political question is whether this country has not made a mistake in giving too large liberties of railroad construction. In the state of Colorado between Pueblo and Denver, are three independent lines of road, with separate and distinct tracks and right of way. To say nothing of the waste of land, and injury to farms, the cost of these three lines, I am sure, is much more than double that of a single right of way with two tracks, and such single right of way would be adequate for all the business that the three roads have done or are likely to do for many years. The public which uses these roads bears the burden of the extra cost. Would not its interests have been promoted if by contract or law all these railroads had been compelled to unite in a single line?"

POINT TEN.

The law of the state of Minnesota creating the railroad and warehouse commission contains regulations for the joint use of parallel and competing lines, for through billing and for joint rates.

1. It prohibits unreasonable rates and unreasonable preferences. It requires all railroad companies to provide, at points of connection, crossing or intersection, ample facilities by the construction of connecting tracks for transferring cars and traffic of all kinds, from the tracks of one road to the tracks of another, and for receiving and forwarding cars of one road by another road. It further provides:

"All railway companies doing business in this state, shall upon the demand of any person or persons, establish reasonable joint through rates for the transportation of freight between points on their respective lines within the state. Carload lots shall be transferred without unloading from the cars in which such shipments were made, unless such unloading shall be done without charge therefor, to the shipper or receiver of the car and without unreasonable delay, and under such rules as the railroad commission shall provide. Less than carload lots shall be transferred into the connecting railroad cars at cost, which shall be included in and made a part of the joint rate. * * * In event railway companies fail to establish joint through rates, or fail to establish rates for through shipments, and terms upon which the cars of one company shall be transferred in such through shipments from the line of one company to the other, and return, or fail to provide for the convenient and prompt transfer of such through freight from the cars of the receiving to those of the connecting line, the commission may make such joint rates, rules, etc. * * * Nothing herein con-

tained shall require any railroad company to send its cars over the line of another company when its own line reaches the point of destination, but in no case shall the charge exceed the through joint rate between any two points." (Chap. 108, Laws of 1893.)

Section 3, of the Interstate Commerce Act, provides:

"Every common carrier, subject to the provisions of this act shall according to their respective powers afford all reasonable, proper and adequate facilities for the interchange of traffic between their respective lines."

By the proposed agreement the purpose of this law will be accomplished. The law attempts to compel railroad companies to transport freight consigned from a point on the line of one road to a point on the line of another, without unloading, under joint through rates, and that necessary track facilities shall be constructed for such purpose. Thus railroad companies are under obligation to make agreements between themselves—forced in fact to do so—and to transact business under burdensome conditions. By the proposed agreement the purpose of the law will be subserved; the public benefitted and the railroad companies, parties to the agreement will also be benefitted, in the saving of a large expense in cost of doing business, and the investment of millions of capital in constructing new and parallel lines.

POINT ELEVEN.

The agreement which appellee proposes to execute, is with the bondholders of the Northern Pacific Company and not with that company. The traffic agreement is to be executed, not by the Northern Pacific Railroad company, but by a reorganized company, or a company to be organized under acts of congress, or under the laws of one of the states.

1. Under its acts of incorporation appellee has authority to lease the line of any railroad company, to become part owner of or to adopt the line of any other railroad company and to consolidate with any railroad within or without the state. This gives to any railroad company a right to contract with it in respect to leasing, sale or consolidation. A law authorizing appellee to consolidate with another railroad company, giving its name, would be held to authorize such company to enter into such consolidation.

In the matter of the Coney Island Railroad Co., 67 N. Y. 371, the court says:

"Where power is given by statute to one railroad corporation to consolidate with any other, whatever other corporations it selects for a union and finds willing to join it, has power to unite with it although such other corporation is not named in the statute."

In New York Ry. Co. v. N. Y. and New Haven Ry. Co., 42 Conn. 274, it was held:

"Where a railway company has power, under its charter, to buy the railroad and franchises of another company, the power in the charter of the vendee gives, by implication, power to the other company to sell."

2. Under its charter appellee may purchase at foreclosure sale the property and franchises of the Northern Pacific Railroad Company, because it has authority to construct a line of railway parallel with and contiguous to the line of the Northern Pacific Company in the state, and also across other states to Puget Sound. Wherever it has authority to construct a railroad it may lease such road; become part owner of it, or adopt it as its own.

3. The question of the authority of the Northern Pacific Railroad Company is not in the case. The new or reorganized company may have ample power to enter into an agreement of consolidation, lease or sale. The question in this case is confined solely to the right of appellee, under its charter, to execute the agreement on its part. The powers of other companies, not parties to the suit, are, in no wise, involved. There are no provisions in the charter of the Northern Pacific Company limiting it or its stockholders in their rights to dispose of the stock of the company to whomsoever they will.

M. D. GROVER,
C. K. DAVIS,
F. B. KELLOGG,
C. A. SEVERANCE,
Counsel for Appellee.